

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:09-cr-10243-MLW

4
5 UNITED STATES OF AMERICA

6
7 vs.

8
9 RYAN HARRIS

10
11 *****

12
13 For Jury Trial Before:
14 Chief Judge Mark L. Wolf

15
16 United States District Court
17 District of Massachusetts (Boston.)
18 One Courthouse Way
19 Boston, Massachusetts 02210
20 Wednesday, February 22, 2012

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22 *****

23 REPORTER: RICHARD H. ROMANOW, RPR
24 Official Court Reporter
25 United States District Court
One Courthouse Way, Room 5200, Boston, MA 02210
bulldog@richromanow.com

A P P E A R A N C E S

ADAM J. BOOKBINDER, ESQ.

United States Attorney's Office
John Joseph Moakley Federal Courthouse
One Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(617) 748-3112
E-mail: Adam.bookbinder@usdoj.gov

and

MONA SEDKY, ESQ.

U.S. Department of Justice
601 D. Street, N.W.
Washington, D.C. 20530
(202) 353-4304
Email: Mona.sedky@usdoj.gov
For the United States of America

CHARLES P. MCGINTY, ESQ.

Federal Public Defender Office
District of Massachusetts
51 Sleeper Street, 5th Floor
Boston, Massachusetts 02210
(617) 223-8080
E-mail: Charles_mcginty@fd.org
For the defendant

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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CRAIG PHILLIPS

By Mr. Bookbinder: 99

By Mr. McGinty:

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1 P R O C E E D I N G S

2 (Begins 9:00 a.m.)

3 THE CLERK: Criminal Number 09-10243, the
4 United States of America versus Ryan Harris. The Court
5 is in session. You may be seated.

6 THE COURT: Good morning. Would counsel
7 please identify themselves for the record.

8 MR. BOOKBINDER: Good morning, your Honor.
9 Adam Bookbinder and Mona Sedky for the United States.

10 MR. MCGINTY: And Charles McGinty and
11 Christine Demaso for Ryan Harris, your Honor. Thank
12 you.

13 THE COURT: And Mr. Harris is present.

14 Last evening, late, we received the redacted
15 superseding indictment removing the references to "GA,"
16 I believe.

17 Has the defendant received it?

18 MR. MCGINTY: Um, I have not downloaded it,
19 your Honor. I have not seen it. I'm sorry. But I
20 could review it quickly.

21 THE COURT: Um, why don't you do that.

22 MR. MCGINTY: If this is substantially -- if
23 this is what it was the government provided to me, then
24 I have reviewed it already, your Honor.

25 MR. BOOKBINDER: Yeah, it's the same. But

1 there was one place where the indictment still referred
2 to 11 counts rather than 9, so I fixed that, and I took
3 out the forfeiture language, which I don't believe is
4 something the Court needs to read to the jury.
5 Otherwise it's the same as the one that I gave to
6 Mr. McGinty.

7 MR. MCGINTY: We have gone through it
8 carefully, your Honor.

9 THE COURT: Okay. So Mr. Hohler will, at the
10 appropriate time, read it to the jury, and all the
11 jurors are here.

12 All right. Do we have any signed stipulations?

13 MR. MCGINTY: I'm sorry, your Honor, I
14 neglected to -- we will have that by the end of today.

15 THE COURT: Okay. Has the government resolved
16 or made progress on the issue of highlighting the
17 exhibits?

18 MR. BOOKBINDER: Yeah, your Honor, we've
19 spoken to the IT person who is working with us and he
20 thinks, um, that he ought to be able to take the
21 highlighting out, generate a juror's disk, so that what
22 the jurors see doesn't have it, generate new printed
23 versions which we can make as the originals that don't
24 have it, and for the purposes of the today's examination
25 and in the future I understand that for even court

1 examination there is a problem with the highlighting.

2 THE COURT: That's my view because if you put
3 the plain document on there and then wanted to use the
4 technology to highlight if you could. So we'll proceed
5 that way, Mr. McGinty, and I expect before the documents
6 get to the jury, we'll have these issues resolved.

7 MR. BOOKBINDER: Yes, your Honor.

8 THE COURT: All right.

9 I would tell you what I've drafted for preliminary
10 instructions. After Mr. Hohler -- why don't you move
11 the easel out of the way for the moment.

12 MR. BOOKBINDER: Your Honor, is that an
13 appropriate way to have it during the opening?

14 THE COURT: If you have it there I won't be
15 able to see what's on it, but that's -- what are you
16 going to put on there?

17 MR. BOOKBINDER: There are three chalks that
18 look like this. We can give them to the defense.
19 Actually they have them. These are good quotes from
20 Ryan Harris that we provided earlier.

21 (Shows.)

22 THE COURT: Okay. I can't see it. You're
23 going to have to hold it up.

24 MR. BOOKBINDER: Okay. I may have copies of
25 them.

1 THE COURT: That would be fine.

2 (Pause.)

3 THE COURT: And, Mr. McGinty, you've seen
4 these and I understand there's no objection.

5 MR. MCGINTY: Yes, that's right, your Honor.

6 THE COURT: All right. I'll just mark these
7 Exhibits B1, B2 and B3 for identification so the record
8 will be clear what you're showing the jury. All right?

9 (Exhibits B1, B2 and B3, marked.)

10 THE COURT: All right. Here are the
11 preliminary instructions that I propose to do. And
12 notwithstanding all the discussion we've had, they're
13 pretty bare-bones.

14 I'll tell the jury, after the indictment's read,
15 that:

16 "I'm now going to give you an overview of the law
17 to help you understand the evidence that you'll be
18 hearing. I'll be giving you much more detailed
19 instructions at the end of the case. If there's
20 anything I say now that sounds different than what I
21 tell you at the end of the case, you have to follow the
22 law as I explain it at the end of the case.

23 Count 1 charges the defendant with conspiracy to
24 commit wire fraud. A conspiracy is an agreement to
25 commit a crime, it need not be an expressed agreement,

1 it could be a tacit understanding and proven by
2 circumstantial evidence.

3 To prove the conspiracy charged in this case the
4 government must prove beyond a reasonable doubt, first,
5 that the agreement specified in the indictment and not
6 some other agreement or agreements existed between at
7 least two people to commit wire fraud. Second, that the
8 defendant willfully joined in that agreement. And
9 third, that one of the co-conspirators committed an
10 overt act in Massachusetts in an effort to further the
11 purpose of the conspiracy."

12 And actually I recognize that ultimately whether
13 an overt act is -- occurred in Massachusetts relates to
14 venue and that only has to be proven by a preponderance
15 of the evidence, but I don't want to get into that now,
16 we'll see whether you want me to get into it at the end
17 of the case.

18 But basically -- and then I'm going to tell them:

19 "To act willfully means to do something
20 intentionally, not by accident or mistake, and with
21 knowledge that what is being done is unlawful."

22 Anybody have any comments or concerns so far?

23 (Silence.)

24 THE COURT: No. All right.

25 I had thought, you know, about giving **Portella**

1 language on single and multiple conspiracy, but I think
2 it would be too much in a preliminary instruction and
3 we'll keep working on that.

4 So the next thing I now intend to tell them is:

5 "That the object of the alleged conspiracy is to
6 commit wire fraud. Counts 2 to 9 also charge that the
7 defendant committed wire fraud.

8 To prove an individual has committed wire fraud,
9 the government must prove beyond a reasonable doubt,
10 first, the defendant devised or participated in a scheme
11 to defraud or to obtain something of value from an
12 internet service provider. Second, the scheme involved
13 a material falsehood. Third, the defendant acted
14 knowingly, meaning intentionally, not by accident or
15 mistake, willfully, and with an intent to deceive and
16 defraud. And fourth, that an interstate wire
17 communication was used in furtherance of the scheme."

18 So that's what I intend to tell them at the moment
19 about wire fraud. Okay?

20 Finally, I intend to tell them -- and this
21 actually relates to something we haven't discussed. I'm
22 going to tell them a little something about buyer/seller
23 and **Direct Sales**, and at the moment I intend to say:

24 "For both conspiracy and wire fraud, it would not
25 be enough for the government to prove that Harris only

1 sold a product to someone he knew would use it to commit
2 a crime. However, the nature of the product sold and
3 any knowledge Harris had as to how it would be used are
4 evidence that you could consider, along with all the
5 other evidence, in deciding whether the government has
6 proven any or all of the conspiracy and wire fraud
7 charges beyond a reasonable doubt."

8 And what I said we haven't discussed before, we've
9 been discussing **Direct Sales** in the context of
10 conspiracy, not in the context of wire fraud. But I
11 can't say I've thought it all the way through. I don't
12 think there's a distinction because of the required
13 intent to defraud, or the wire fraud, the aiding and
14 abetting the wire fraud.

15 Does anybody want to be heard on that? That's the
16 last thing that I propose to say at the moment.

17 (Silence.)

18 THE COURT: Okay, the government has no
19 comment. Mr. McGinty?

20 MR. MCGINTY: I had hoped for a more
21 comprehensive structure. I think the difficulty the
22 jury is going to have is, um, trying to, at the end of
23 the case, relate back to the evidence they had sorted,
24 based on a conceptual framework, brought in, um, I would
25 say, too late. The jury ought to know that on a sale

1 blown, it's not sufficient and the Court says --

2 THE COURT: I just told them that.

3 MR. MCGINTY: -- and the Court says that. But
4 additionally there are components of this that are of
5 consequence. There's the issue of the CoaxThief and
6 whether a device that can find and use MACs is unlawful
7 --

8 THE COURT: I couldn't possibly cover that in
9 a preliminary instruction. I haven't heard the evidence
10 myself.

11 MR. MCGINTY: Well, in that case, your Honor,
12 as these things come up, I would perhaps suggest that we
13 make -- that the Court make instructions as the evidence
14 comes in on those, perhaps, to address those sort of
15 concepts.

16 THE COURT: If you request it, I'll consider
17 it. I'm always interested in assuring the jury properly
18 comprehends what's going on. But, um, there are always
19 going to be questions about this.

20 MR. MCGINTY: And I continue to express my
21 reservation about the Court's interpretation of **Direct**
22 **Sales**. When the Court talks about the nature of the
23 object, again, the defense's position is that there are
24 restricted and nonrestricted items. That's the
25 dichotomy that controls for **Direct Sales**. And we fall

1 in the latter category, which is a consequential
2 category in terms of what a person is responsible for.

3 THE COURT: Well, I will continue to consider
4 that, but so far I've told you what I believe are the
5 legal implications of **Direct Sales** and the related cases
6 are. And I am admonishing them to listen carefully at
7 the end of the case and follow the instructions I give
8 them at the end of the case and if they sound different
9 than what I say today, that they should rely on what I
10 say at the conclusion of the case.

11 All right. Now, when we finish Phillips, um, the
12 next witness, as I understand it, would be Kohler, and I
13 believe there are no issues to be ruled on with regard
14 to Kohler, right?

15 MR. BOOKBINDER: I think there are not, your
16 Honor. There are simply two chawks that we intend to
17 use with him, which I have given to defense counsel, and
18 I don't believe there are any objection to those.

19 THE COURT: All right. Well, you can give
20 them to me tomorrow and confirm there's no objection.

21 And then after Kohler is Lindquist, right?

22 MR. BOOKBINDER: Yes.

23 THE COURT: All right. And Lindquist, I want
24 to speak to her and her lawyer briefly to see if she
25 intends to assert -- outside the presence of the jury,

1 to see if she intends to assert a Fifth Amendment
2 privilege. If she does, I'll enter the immunity order.

3 MR. BOOKBINDER: And I expect she will, your
4 Honor. I don't believe that her attorney -- she does
5 have an attorney, but I don't believe that her attorney
6 will be there.

7 THE COURT: All right. And I think the only
8 objection concerning her is whether she should be able
9 to testify about the daily operations of the company and
10 essentially it's the analysis I've given with regard to
11 Phillips. We can talk about this at the end of the day.

12 And I think the only exhibit associated with
13 Lindquist is Exhibit 6 and I found part of that chat
14 admissible and I assume that the redactions have been
15 done appropriately.

16 Let me just review to make sure I have it clearly
17 in mind, the government's -- the government, on February
18 7th, gave me a list of people with regard to whom it's
19 going to ask for **Petrozziello** rulings and I want to see
20 if this is accurate and complete still.

21 Phillips. Lindquist. Mr. T. MooreR. LB
22 Neptune. Joe Port, also known as GA212. Sean Davidson,
23 or Sean 19661. Andrew Spear. Boris Blinderman, live-
24 it-up 278. And Jason P, who is also known as Board
25 714.

1 Is the government still going to be looking for
2 **Petrozziello** rulings on all of those people?

3 MR. BOOKBINDER: We are, your Honor, although
4 obviously if the Court -- and this may be in the context
5 of the **Petrozziello** ruling, but to the extent that the
6 Court is not going to rule out some of the posts, then
7 that will result in -- as co-conspirator statements,
8 that would --

9 THE COURT: Yeah, you'll have to -- I told you
10 yesterday -- I guess -- these are not going to come up
11 today, but you're going to have to let me know when
12 those posts come up and what the evidence is and I'll
13 decide whether to conditionally admit it, because I
14 still have a sense that I haven't read everything or
15 seen everything that I want to see.

16 MR. BOOKBINDER: Your Honor, the posts we
17 would be using them with Special Agent Russell and they
18 will be read at the end of trial.

19 THE COURT: All right. Very well.

20 MR. BOOKBINDER: And, your Honor, I have
21 actually copies of the Chris Kohler chalks right here,
22 your Honor.

23 THE COURT: All right. Why don't we mark them
24 as Exhibit C and then we'll get there.

25 (Pause.)

1 THE COURT: Okay. We'll make these C1 and C2.

2 (Exhibits C1 and C2, marked.)

3 MR. BOOKBINDER: Your Honor, when we're
4 talking about exhibits, I just want to make sure I'm
5 clear about the procedure the Court would like for
6 actually using them with the witness and offering them
7 into evidence. What I gleaned from talking to
8 Mr. Hohler about this is that the way it was done in, I
9 think, in *DiMasi*, and it probably makes some sense is
10 that we will, before the witness testifies, we will give
11 the original exhibits to Mr. Hohler, that we will just
12 be showing them to the witnesses on the monitor, and
13 that the Court will have the witness monitor on and then
14 when the exhibit is admitted, we'll turn the jury
15 monitor. Is that -- does that make sense to your
16 Honor?

17 THE COURT: Yes.

18 MR. BOOKBINDER: Okay, that's fine. But
19 there's one exception, where maybe we can do things a
20 little differently, and that's actually with
21 Mr. Phillips because as I think I mentioned, there are
22 about six, I think, of those chat exhibits, that we want
23 him just to look at very briefly and say, "Yes, I copied
24 these," and we're not going to be seeking to admit them
25 at that point, and so I thought the easiest way to do

1 that would be to actually give him the originals, he
2 would just look at them quickly rather than having to,
3 you know, show them on the screen and --

4 THE COURT: That's fine, and then they'll be
5 given a letter and when you move them into admission, if
6 they're admitted, they'll be given a number. Okay?

7 MR. BOOKBINDER: Yes, your Honor.

8 THE COURT: All right. I don't intend to give
9 the jurors their notebooks until after the openings.
10 Since the openings aren't evidence, they should be
11 taking notes on the evidence, I think, rather than on
12 the arguments or the instructions.

13 And finally I'll say -- I read **Veradackis** again.
14 It's a different situation. **Veradackis** was the verdict
15 of a car that wasn't -- it was admitted and it wasn't a
16 charge in this case. It was 404(b). It was extrinsic.
17 Here, to the extent the government is seeking to
18 introduce Mr. Harris's own acts during the period of the
19 conspiracy, it's intrinsic, it's not subject to a 404(b)
20 analysis, but it is subject to a 403 analysis. But 403
21 rarely operates to exclude otherwise admissible
22 evidence. And I don't find that the probative value of
23 Mr. Harris's own conduct, as it's been represented to
24 me, the evidence of his own conduct was substantially
25 outweighed by any of the Rule 403 factors.

1 MR. BOOKBINDER: Your Honor, one thing I just
2 want to clarify is that I believe that Mr. Phillips will
3 testify that the first time he saw Mr. Harris use an
4 uncapped modem was probably in approximately 2002, so
5 before the conspiracy started. Um, I would suggest that
6 it's exactly the kind of conduct we're talking about
7 here, but just temporally, it would be before they actually
8 started working together on the company. I want to make
9 that clear for the Court.

10 THE COURT: Well, I think, as I said
11 yesterday, that, you know, evidence -- is there
12 ultimately going to be evidence that he saw them use,
13 um, essentially steal internet service, you know, uncap
14 something during the period?

15 MR. BOOKBINDER: Oh, absolutely, it's just the
16 first time was before.

17 THE COURT: Based on what I know, that's
18 admissible.

19 MR. MCGINTY: Well, your Honor, again we
20 object to this and have made consistent objection to
21 this use of personal conduct as bearing in some way on
22 the conspiratorial agreement, um, and the 403 factor, I
23 think, also cautions the Court.

24 THE COURT: Yeah. The earlier might be
25 404(b), arguably, it's not in the period of the

1 conspiracy, although the indictment charges the
2 conspiracy began in about, it doesn't charge that it --
3 doesn't it?

4 (Pause.)

5 THE COURT: Yes, from approximately 2003. So
6 2002 is approximately 2003. I continue to regard it as
7 extrinsic but -- I'm sorry, intrinsic, but, um, if it
8 goes to sort of the genesis of the relationship that
9 Mr. Phillips is talking about, there is going to be, as
10 represented, other testimony that Mr. Phillips saw
11 Mr. Harris use uncapped service during the period of the
12 conspiracy, I think for coherence sake and to explain
13 the relationship, including the trust between the
14 parties, the first instance can come into evidence, too.

15 MR. MCGINTY: Your Honor, may I note that the
16 conspiracy charge in 2003 and on, here the disclosure
17 this morning of the conversation yesterday, which
18 addresses the use of the Surfboard 2100 --

19 THE COURT: I'm sorry. I don't know what
20 you're talking about. What was disclosed today?

21 MR. MCGINTY: This is disclosure of the use of
22 the Surfboard 2100 modem in 2001 two years preceding the
23 alleged conception of the conspiracy, um, the use of the
24 modem at a party, um, and this was disclosed, um, as far
25 as I know this morning. So if this is as the Court

1 referred to it, among other things, as 404(b), it's late
2 disclosure of 404(b) and I've asked that it be
3 excluded.

4 MR. BOOKBINDER: There's nothing knew about
5 that, that's actually been disclosed in reports that
6 have gone back months and months with Mr. Phillips and
7 isn't when we spoke to him last night and the agent
8 wrote up a report and it is included. There's nothing
9 new about this.

10 THE COURT: Okay. Have I be given these?

11 MR. BOOKBINDER: You've been given everything
12 except for the one that the agent wrote up last night,
13 your Honor. I apologize for that. I gave a copy to
14 Mr. McGinty. I have a copy here for the Court.

15 THE COURT: Well, the jurors are waiting.
16 Let's get through the openings and if there's more to
17 discuss, before Mr. Phillips. But I'd like a copy of
18 that disclosure and I'll look at it at the break. All
19 right?

20 Is there anything else before we get the jury?

21 (Silence.)

22 THE COURT: Apparently not. Then we will.

23 (Moved podium over.)

24 (Jury enters, 9:30 a.m.)

25 THE COURT: Ladies and gentlemen, good

1 morning. Welcome back.

2 I've been working with the lawyers after you left
3 yesterday and earlier this morning. We're ready to
4 proceed. And I trust things will go smoothly now that
5 you're in the jury box.

6 As you know, you were sworn in as the jury
7 yesterday. As I told you I'll now explain to you your
8 functions as jurors.

9 There are 13 of you in the jury box. Only 12 can
10 deliberate and decide the case. We have one alternate
11 in the last seat in the back row. But it's very
12 important that all of you pay careful attention to
13 everything. Frequently one of the first twelve jurors
14 has an illness or an emergency, the juror's excused and
15 the alternate becomes a deliberating juror. So I know
16 and need all of you to pay careful attention to
17 everything.

18 As the jury in this case, it's going to be your
19 job to find the facts based on the evidence, apply the
20 law as I'll describe it in detail at the end of the
21 case, and reach a verdict. You should not interpret, or
22 to be more precise, you should not misinterpret anything
23 I say or do in the course of the case as a suggestion of
24 what I think your verdict should be. That's entirely up
25 to you.

1 You heard me say yesterday, and now I've repeated
2 it, that you'll find the facts based on the evidence.
3 The evidence will come to you in several ways. It will
4 come through the testimony of witnesses who will
5 testify, it will come to you in the form of documents
6 that would be admitted as exhibits, um, it may come to
7 you in the form of other exhibits, and I expect that
8 there will be some stipulations, certain facts that the
9 parties will agree are true and that you may accept as
10 true.

11 You are also going to be exposed to some things
12 that are not evidence. Anything the lawyers say is not
13 evidence. When I finish my instructions you will hear
14 the opening statements of the parties. That is not
15 evidence. You will hear, after that, the lawyers
16 question the witnesses. The questions are not evidence,
17 the answers are evidence. And at the end of the case
18 the attorneys will have an opportunity to make closing
19 arguments reminding you of the evidence and urging you
20 to make certain inferences. But what they say is not
21 evidence.

22 In addition, in the course of the case I am
23 confident that you'll hear some objections to certain
24 questions or proposed evidence and that's necessary and
25 appropriate. In federal court we operate under a set of

1 rules, the Federal Rules of Evidence, which are
2 essentially laws that establish standards for
3 determining what kind of information is sufficiently
4 relevant and reliable for you to hear and consider in
5 deciding the case.

6 If an attorney thinks that a question is asking
7 for information that is not admissible under the rules
8 or that a document is not admissible under the rules of
9 evidence, the attorney will object. If it is clear to
10 me -- and they won't speak to their objections, the
11 reasons for the objections in front of you.

12 If it's clear to me why they're objecting, or I
13 can get that very quickly from them in response to a
14 question, I'll rule on the objection, and I'll either
15 say "sustained," which means that was a meritorious
16 objection and the question can't be answered or the
17 document can't be admitted or I'll say "overruled,"
18 which means I've decided that under the rules of
19 Evidence you should hear this and then you'll hear it.
20 If it's not clear to me why the objection is being made
21 or how I should rule on it, I'll see the parties at the
22 sidebar and we'll turn on the music and I'll discuss it
23 with you. You shouldn't try to hear that. It's not an
24 effort to keep anything particularly interesting or
25 important away from you, it's just a way for me to get

1 the information necessary to make proper decisions.

2 It's possible that I will admit some evidence only
3 for a limited purpose and if I do that I'll tell you
4 that "this evidence is being admitted for this limited
5 purpose and you may consider it only for that limited
6 purpose." And anything you may see or hear outside the
7 railing of this courtroom is not evidence and you
8 shouldn't be influenced by anything you observe outside
9 the rail, you should be influenced only by the evidence.

10 The evidence will come to you in two forms,
11 there's direct evidence and there's circumstantial
12 evidence. Direct evidence is direct proof of a fact
13 such as the testimony of a witness who says "I was
14 there, this is what I saw, this is what I heard."
15 Circumstantial evidence is proof of certain facts from
16 which you may infer or conclude that other facts exist.
17 Now that may sound like some complicated legal concept,
18 circumstantial evidence, but really you reason based on
19 circumstantial evidence all the time.

20 So if you were to go to sleep tonight and the
21 ground was green in front of your house and when you got
22 up tomorrow morning it was covered with snow, you would
23 infer that during the night, while you were sleeping, it
24 snowed, although you didn't see it and nobody told you
25 that happened. That's reasoning from circumstantial

1 evidence.

2 Circumstantial evidence and direct evidence are
3 equal in the law. You don't -- you can give -- you
4 know, you decide what you believe, as I'll explain, and
5 then what weight to give the believable or credible
6 evidence.

7 In this case, part of your job as jurors is going
8 to be to decide the credibility, the believability of
9 certain testimony and other evidence. At the end of the
10 case I'll give you a list of sort of common sense
11 considerations that you might want to use in making
12 credibility judgments that you need to make.

13 When I questioned you yesterday I told you about
14 certain fundamental principles that apply in every
15 criminal case like this one. I want to remind you of
16 them now.

17 First among them is that the defendant, Ryan
18 Harris, is presumed innocent and in a moment I'm going
19 to have Mr. Hohler read you the indictment in this
20 case. The indictment contains the charges. But it is
21 only an accusation, it is not evidence or proof that the
22 defendant is guilty.

23 The defendant starts with a clean slate. The
24 burden is on the government throughout the case. The
25 defendant does not have to prove his innocence or

1 present any evidence nor does the defendant have to
2 testify, and if he chooses not to testify, you may not
3 draw any suggestion that he's guilty from his decision
4 not to testify and you may not consider that fact in
5 deciding the case.

6 Finally, the government has to prove the elements,
7 the essential elements of the crimes charged beyond a
8 reasonable doubt. At the end of the case I'll explain
9 to you this concept of reasonable doubt. But you should
10 know, since some of you have served on juries before,
11 that it's a higher standard than that used in civil
12 cases where the proof has to be by a preponderance of
13 the evidence.

14 All right. Now I'm going to have Mr. Hohler read
15 you the 12-page indictment in this case, the charges,
16 and don't think you have to memorize this. At the end
17 of the case, when you're deliberating, you'll have this
18 document back in the jury room. But it's going to be
19 read to you now so you'll have a sense of what the
20 charges are.

21 THE CLERK: The United States District Court,
22 the District of Massachusetts, Case Number 09-10243-MLW,
23 the United States of America versus Ryan Harris, aka
24 DerEngel, 18 U.S.C. Section 371, conspiracy, 18 U.S.C.
25 Sections 1343 and 1342, wire fraud.

1 THE COURT: No, actually, that's 1342 and
2 Section 2.

3 THE CLERK: And Section 2. Sorry, Judge.

4 Superseding indictment. The grand jury charges:
5 Introduction. At all times relevant to the charges in
6 this indictment, Number 1, Ryan Harris, aka DerEngel,
7 lived in California and Hong Kong. He was founder,
8 owner, and president of, and a software developer for,
9 TCNISO, a company incorporated in California with its
10 principal place of business in the San Diego area.
11 TCNISO's primary business was to develop, distribute,
12 and sell, quote, "cable modem hacking," unquote,
13 software and hardware products. These products were
14 designed to modify cable modems so that users could
15 obtain internet service from internet service providers
16 without paying for the service and without disclosing
17 their true identities. Additionally, Harris created and
18 administered forums on the TCNISO website that offered
19 ongoing customer support to assist users with their
20 cable modem hacking.

21 Paragraph 2. IL, an unindicted co-conspirator,
22 lived in Kentucky and was a software developer for
23 TCNISO.

24 Paragraph 3. CP, an unindicted co-conspirator,
25 lived in California and was the vice-president of TCNISO

1 from approximately 2003 to approximately 2007.

2 Paragraph 4. NH, an unindicted co-conspirator,
3 lived in Worcester, Massachusetts and acquired and
4 repeatedly used TCNISO's cable modem hacking products
5 and services in Massachusetts.

6 Paragraph 5. WM, an unindicted co-conspirator,
7 lived in Everett, Massachusetts and acquired and
8 repeatedly used TCNISO's cable modem hacking products
9 and services in Massachusetts.

10 Paragraph 6. JL, an unindicted co-conspirator,
11 lived in Mattapan, Massachusetts and acquired and
12 repeatedly used TCNISO's cable modem hacking products
13 and services in Massachusetts.

14 Paragraph 7. Certain internet service providers,
15 ISPs, provide internet service through cable networks
16 which are the same systems that deliver cable television
17 signals. ISPs charge subscribers a monthly fee for this
18 internet access and typically charge an additional
19 premium if subscribers want faster Internet access.

20 Paragraph 8. In order to access the internet
21 through a cable network, a subscriber installs a cable
22 modem which connects the subscriber's computer to the
23 ISP's cable network. ISPs offer the modems to the
24 subscriber and charge a rental fee. Each cable modem is
25 assigned a theoretically unique MAC or a Media Access

1 Control at an address that identifies the specific modem
2 to the ISP. This unique MAC address is designed to
3 allow the ISP to associate the particular cable modem
4 with a particular paying cable subscriber and to insure
5 that only paying subscribers are accessing the ISP's
6 cable network.

7 Paragraph 9. When a computer user seeks to access
8 the internet, the user's modem will report its MAC
9 address to the ISP, and if the ISP recognizes the
10 modem's MAC address as belonging to a paying subscriber,
11 the ISP will allow the user to access the internet via
12 the ISP's network. The ISP will also deliver a unique
13 configuration file to the modem that determines the
14 speed with which the internet access will be delivered.

15 Paragraph 10. Cable modem hacking includes the
16 alteration of the modem's software for the purposes of
17 obtaining internet service without an account and
18 without paying for that service. In order to steal
19 internet service, the computer user's modem is modified
20 so that it uses, without authorization, a MAC address
21 that belongs to the cable modem of a legitimate paying
22 internet service subscriber. This is often referred to
23 as "MAC address cloning" or "spoofing."

24 Paragraph 11. Cable modem hacking also includes
25 the modification of a modem to use, without

1 authorization, a configuration file with the ISP, but to
2 provide it only to a legitimate paying subscriber. By
3 modifying a modem to use and a configuration file
4 associated with a premium higher speed service, a user
5 can increase or uncap the speed at which the internet
6 service is provided without paying the required
7 premiums.

8 Paragraph 12. Additionally, cable modem hacking,
9 particularly MAC address cloning or spoofing, can be
10 used to mask the user's on-line identity.

11 Count 1, conspiracy, 18 U.S.C. Section 371.

12 Paragraph 13. The grand jury realleges and
13 incorporates by reference the allegations made in
14 Paragraphs 1 through 12 of this indictment and further
15 charges that:

16 Paragraph 14. From approximately 2003 through
17 approximately August 2009, in the District of
18 Massachusetts and elsewhere, Ryan Harris, and others
19 known and unknown to the grand jury, did knowingly
20 conspire to commit wire fraud by devising a scheme to
21 defraud and to obtain money and property by means of
22 false or fraudulent pretenses, representations of
23 promises, and transmitting and causing to be transmitted
24 in interstate commerce wire communications, including
25 writings, signals, and sounds, for the purposes of

1 executing the scheme to defraud.

2 Manner and means of the conspiracy.

3 Paragraph 15. Harris and his co-conspirators
4 developed cable modem hacking products and services,
5 including Sigma, BlackCat, and Dream OS that enabled
6 computer users to obtain internet service without making
7 the required payment. Among other techniques, Harris's
8 products and services enabled users to disguise their
9 cable modem by mimicking or cloning the unique
10 identifiers, including the MAC address, of the modem of
11 a legitimate paying internet subscriber. The user
12 thereby received internet service without paying for it.

13 Paragraph 16. Harris's products and services also
14 enabled users to obtain faster upgraded or uncapped
15 internet service without paying the premiums charged by
16 the ISP. These products and services enabled users to
17 use without authorizations configuration files that the
18 ISP would otherwise only provide to a legitimate
19 subscriber paying for premium access. The user
20 therefore received the type of faster internet service
21 for which a legitimate user was paying a premium.

22 Paragraph 17. Harris's products and services also
23 enabled users to disguise their true on-line identities
24 which in turn allowed them to remain anonymous when
25 engaged in on-line activities such as downloading,

1 infringing, or pirating movies onto their computers.

2 Paragraph 18. Harris and his co-conspirators
3 developed additional software tools that users could use
4 to steal or sniff the MAC addresses and configuration
5 files belonging to legitimate paying subscribers and use
6 these identifiers in conjunction with Harris's other
7 products to obtain free or faster internet access
8 without authorization.

9 Paragraph 19. Harris and his co-conspirators
10 developed additional product features that would help
11 users evade detection by ISPs, for example, by disabling
12 the ISP's ability to probe the cable modem to obtain
13 information about it

14 Paragraph 20. Harris and his co-conspirators
15 distribute their cable modem hacking products and
16 services on their website, TCNISO.net, as well as at the
17 TCNISO store in San Diego, California. Harris charged
18 users for some of the products and made others,
19 particularly older versions, available for free. Harris
20 sold both the software and hardware as standalone
21 products and also sold the software preloaded onto cable
22 modems.

23 Paragraph 21. Harris and his co-conspirators also
24 provided ongoing support to assist their users with
25 cable modem hacking primarily through their website,

1 TCNISO.net. The website offered video tutorials and
2 other instruction manuals. It also contained forums or
3 a bulletin board that allowed Harris, his
4 co-conspirators and users, to exchange information about
5 product updates and provide tutorials and advice about
6 installing and using Harris's cable modem hacking
7 products. Harris and several co-conspirators moderated
8 and personally participated in these on-line discussion
9 forums.

10 Paragraph 22. Through these forums users
11 discussed with Harris, his co-conspirators, and each
12 other, acquiring and exchanging stolen MAC addresses and
13 configuration files.

14 Paragraph 23. Additionally, the forums hosted
15 discussions about techniques that certain ISPs employed
16 to detect and block the use of Harris's cable modem
17 hacking products on the ISP's networks. In response to
18 these discussions, Harris and his co-conspirators
19 developed and distributed updates to their products and
20 services that were designed to work around the ISP's
21 detection and blocking techniques.

22 Paragraph 24. Harris also offered for sale a book
23 entitled "Hacking the Cable Modem," which Harris wrote
24 under his alias "DerEngel," and for which IL was the
25 technical reviewer.

1 Paragraph 25. Harris and his co-conspirators knew
2 that users successfully used Harris's products and
3 services to obtain internet service and faster internet
4 access without paying.

5 Paragraph 26. This scheme injured numerous ISPs
6 around the country and through approximately 2003
7 through 2009 generated more than \$1 million in revenue
8 for TCNISO.

9 Overt acts. Harris and his co-conspirators
10 committed the following overt acts within the District
11 of Massachusetts and elsewhere. The development and
12 distribution of TCNISO products.

13 Paragraph 27. Beginning in approximately 2003,
14 Harris, IL, and CP, developed and distributed Sigma, a
15 cable modem hacking software application.

16 Paragraph 28. Beginning in approximately 2004,
17 Harris, IL, and CP, developed and distributed BlackCat,
18 a combination of hardware and software that enabled
19 users to modify newer more secure cable modems.

20 Paragraph 29. Beginning at approximately 2005,
21 Harris, IL and CP, developed and distributed Sigma X, a
22 more sophisticated version of the Sigma software, which
23 had the ability to block ISPs from probing a modem to
24 determine whether it was hacked.

25 The TCNISO.net forums.

1 Paragraph 30. From in or about 2006 to in or
2 about 2008, Harris and his co-conspirators posted on the
3 TCNISO.net forums comments from users who stated that
4 they were using or attempting to use TCNISO's products
5 to steal internet access from various ISPs.

6 Paragraph 31. From in or about 2006 to in or
7 about 2008, Harris and his co-conspirators posted on the
8 TCNISO.net forums comments from users who stated that
9 they were using or attempting to use TCNISO's products
10 to obtain faster internet access from various ISPs
11 without paying for the faster service.

12 Paragraph 32. From in or about 2006 to in or
13 about 2008, Harris and his co-conspirators posted on the
14 TCNISO.net forums comments from users who stated that
15 they had stolen or sniffed for the MAC addresses of
16 legitimate paying internet subscribers and were looking
17 to trade these stolen MAC addresses with other users.

18 Paragraph 33. From approximately 2006 to 2008,
19 Harris and his co-conspirators posted on a TCNISO.net
20 forums comments from users who stated that their ISPs
21 were detecting and blocking them from the ISP's networks
22 and who sought assistance about how to work around these
23 detection and blocking techniques.

24 Paragraph 34. On or about March 27, 2007, Harris,
25 identifying himself by his alias "DerEngel," posted on

1 the TCNISO.net forum a comment asking for any, quote,
2 "verified MAC addresses and/or config files," unquote,
3 for a major metropolitan area promising that, quote,
4 "rewards will follow," unquote.

5 NH's acquisition and use of Harris's products and
6 services.

7 Paragraph 35. From approximately 2005 through
8 2008, Harris, IL, and CP, communicated repeatedly
9 on-line with NH about cable modem hacking.

10 Paragraph 36. In approximately 2005, NH
11 downloaded the Sigma software to his home computer in
12 Massachusetts. He then accessed TCNISO's website forums
13 and used them, along with other means, to trade for
14 stolen MAC addresses belonging to legitimate Charter
15 Communications to charter internet subscribers. NH used
16 Sigma to change his modem's MAC address to a new Charter
17 MAC address. NH was then able to connect to the
18 internet via Charter without paying.

19 Paragraph 37. NH also used Sigma to change his
20 modem's configuration file and in doing so, quote,
21 "uncap," unquote, his modem. This increased his
22 internet access speeds approximately tenfold. NH did
23 not pay the premium for this faster service.

24 Paragraph 38. In approximately 2007, NH
25 downloaded to his home computer a new version of the

1 Sigma program, Sigma X. NH used Sigma X to modify a new
2 cable modem and obtain free uncapped internet access
3 from Charter.

4 Paragraph 39. NH and CP discussed hacking into
5 another ISP, Roadrunner, in order to obtain free
6 internet access service -- I'm sorry, free internet
7 service.

8 Paragraph 40. On or about January 15, 2007, NH
9 accessed the internet using Harris's products and
10 services in a cloned MAC address and participated in an
11 on-line chat in which he discussed hacking into
12 Motorola's computer servers.

13 Paragraph 41. On or about December 5th, 2007, NH
14 accessed the internet using Harris's products and
15 services and a cloned MAC address and participated in
16 the on-line chat in which he discussed hacking into
17 Charter's computer servers.

18 JL's acquisition and use of Harris's products and
19 services.

20 Paragraph 42. In or about June 2008, JL, using a
21 computer in Massachusetts, visited the TCNISO website,
22 placed one or more orders for one or more modified cable
23 modems and ancillary products and made one or more
24 on-line payments to Harris.

25 Paragraph 43. Harris then sent the modems and

1 ancillary products to JL in Massachusetts.

2 Paragraph 44. JL used TCNISO's website and forums
3 to obtain information that he used to change his modem's
4 MAC address and configuration file.

5 Paragraph 45. From in or about June 2008 through
6 in or about June 2009, JL was then able to connect to
7 the internet via Comcast without paying.

8 Paragraph 46. JL also got from TCNISO
9 approximately 20 additional cable modems, which he
10 provided to his friends and family members, many of whom
11 were also located in the District of Massachusetts.

12 WN's acquisition and use of Harris's products.

13 Paragraph 47. In or about June 2009, WM, using a
14 computer in the District of Massachusetts, visited the
15 TCNISO website, placed an order for a modified cable
16 modem and ancillary products and made an on-line payment
17 to Harris.

18 Paragraph 48. Harris then sent the modem and
19 ancillary products to WM in Massachusetts.

20 Paragraph 49. WM used TCNISO's website and forums
21 to obtain configuration files and other information
22 which he used to change his modem's MAC address and
23 configuration file.

24 Paragraph 50. From in or about June 2009 through
25 in or about August 2009, WM was then able to connect to

1 the internet via Comcast without paying.

2 FBI undercover buys.

3 Paragraph 51. On or about November 24, 2008,
4 Harris, through the TCNISO.net website, sold two
5 Motorola SB-5100 BlackCat USB cable modems, three
6 Motorola SB-4200 Sigma cable modems, and one, quote,
7 "Hacking the Cable Modem," unquote, book to an
8 undercover FBI agent in Boston, Massachusetts.

9 Paragraph 52. On or about November 24th, 2008, an
10 undercover FBI agent in Boston called TCNISO at the
11 phone number provided on the TCNISO.net website.
12 Harris, or a TCNISO employee, answered the phone and
13 helped process the purchase of the modems and the book.

14 Paragraph 53. On or about December 14, 2008,
15 Harris sent the purchased modems and the book to the
16 undercover FBI agent in Boston. These modems were
17 capable of obtaining free and faster internet service
18 from a cable network, all in violation of 18 U.S.C.
19 Section 371.

20 Counts 2 through 9, wire fraud, 18 U.S.C. Sections
21 1343 and 2.

22 Paragraph 54. The grand jury realleges and
23 incorporates by reference the allegations in Paragraphs
24 1 through 12 and 15 through 53 of this indictment and
25 further charges that:

1 Paragraph 55. On or about the dates set forth
2 below in the District of Massachusetts and elsewhere,
3 Ryan Harris, having knowingly devised a scheme to
4 defraud and to obtain money and property by means of
5 material false and fraudulent pretenses, representations
6 and promises, transmitted and caused to be transmitted
7 in interstate commerce wire communications including
8 writings, signals, and sounds, for the purpose of
9 executing a scheme to defraud, and aided and abetted
10 others in doing so as set forth below.

11 Count 2, approximate date, 2005, wire
12 transmission. NH accessed the internet from
13 Massachusetts and downloaded Harris's Sigma capability
14 hacking product.

15 Count 3, approximate date, 2007, NH accessed the
16 internet from Massachusetts and downloaded Harris's
17 Sigma X cable modem hacking product.

18 Count 4, January 15, 2007. NH accessed the
19 internet from Massachusetts using Harris's products and
20 a firm MAC address and participated in an on-line chat
21 discussing his hacking activities.

22 Count 5, December 5, 2007. NH accessed the
23 internet from Massachusetts using Harris's products and
24 a cloned MAC address and participated in an on-line chat
25 discussing his hacking activities.

1 Count 6, approximate date, June 2008. JL accessed
2 Harris's TCNISO website from Massachusetts and bought a
3 modified cable modem and ancillary products.

4 Count 7, approximate date, July 2008. JL accessed
5 the internet from Massachusetts using Harris's products
6 and a cloned MAC address and obtained free internet
7 access.

8 Count 8, approximate date, June 2009. WM accessed
9 Harris's TCNISO website from Massachusetts and bought a
10 modified cable modem and ancillary products.

11 Count 9, approximate date, July 2009. Wire
12 transmission of WM accessed the internet from
13 Massachusetts using Harris's products and a cloned MAC
14 address and obtained free internet access.

15 All in violation of 18 U.S.C. Sections 1343 and 2.

16 THE COURT: Ladies and gentlemen, those are
17 the charges in the case. At the end of the case I'll
18 tell you in detail what the government has to prove to
19 establish each of those charges. I'm now going to give
20 you a very short overview of the law, um, however,
21 because I think it will help you listen to and
22 understand the evidence. But, as I said, at the end of
23 the case I'm going to give you a much longer, more
24 detailed instructions on the law. And if anything I say
25 at the end of the case sounds different than what I'm

1 telling you now, you follow the law as I describe it at
2 the end of the case.

3 Count 1, in this case, charges the defendant with
4 a conspiracy to commit wire fraud. A conspiracy is an
5 agreement to commit a crime. It does not need to be an
6 express agreement, it can be a tacit understanding
7 proven by circumstantial evidence.

8 (Juror coughing.)

9 THE COURT: We're full service here.
10 Mr. Hohler will give you a glass of water.

11 (Pause.)

12 THE COURT: Let me do that again.

13 Count 1 charges Mr. Harris with a conspiracy. A
14 conspiracy is an agreement to commit a crime. It need
15 not be an express agreement, it can be a tacit
16 understanding that is proven by circumstantial evidence.

17 To prove the conspiracy charged in this case, the
18 government must prove beyond a reasonable doubt, first,
19 that the agreement specified in the indictment, and not
20 some other agreement or agreements, existed between at
21 least two people to commit wire fraud. Second, that the
22 defendant willfully joined in that agreement. And
23 third, that one of the conspirators committed an overt
24 act in Massachusetts, an act in Massachusetts in an
25 effort to further the purpose of the conspiracy.

1 To act willfully means to do something knowingly,
2 that is, intentionally, not by accident or mistake, and
3 with knowledge that what is being done is unlawful. The
4 object of the alleged conspiracy is to commit wire
5 fraud. In addition, Counts 2 and 9 also charge that the
6 defendant committed wire fraud.

7 To prove an individual committed wire fraud, the
8 government must prove beyond a reasonable doubt, first,
9 in this case the defendant, devised or participated in a
10 scheme to defraud or pay something of value from an
11 internet service provider. Second, the scheme involved
12 a material falsehood. Third, the defendant acted
13 knowingly, willfully, and with an intent to deceive and
14 defraud. And fourth, that an interstate wire
15 communication was used in furtherance of the scheme.

16 And finally, for the purposes of these preliminary
17 instructions I'll tell you that for both conspiracy and
18 wire fraud it would not be enough for the government to
19 prove that Harris only sold the product to someone he
20 knew would use it to commit a crime. However, the
21 nature of the crime and any knowledge Harris had as to
22 how it would be used are evidence that you can consider
23 along with all the other evidence in deciding whether
24 the government has proven any or all of the conspiracy
25 and wire fraud charges beyond a reasonable doubt.

1 So hopefully that will be helpful to you, but as I
2 said, I'm going to give you much more detailed
3 instructions at the end of the case.

4 Now I'm going to tell you something about your
5 duties as jurors. One is to listen very carefully to
6 the evidence. Although my stenographer, Mr. Romanow, is
7 writing it all down, we won't have a transcript at the
8 end of the case, so you're going to have to rely on your
9 memories. And actually after the opening statements I'm
10 also going to give you notebooks, so you can take notes
11 if you want.

12 As I told you yesterday, it's very important that
13 you keep an open mind until it's time to deliberate and
14 decide the case. There are several reasons for that.
15 First, as I said yesterday, the evidence will come like
16 bits and pieces of a jigsaw puzzle and the government
17 has the burden of proof, it will call the witnesses
18 first, it will question them first, and things may sound
19 one way when the government's asking the questions and
20 differently, another way when the defense lawyer is
21 asking the questions, and your view of the facts may
22 change as you hear more witnesses questioned, as you get
23 more evidence. In addition, until I give you my
24 detailed instructions at the end of the case, you can't
25 really know what the questions are and what standards

1 you have to apply in answering those questions. So it's
2 very important that you keep an open mind until the end
3 when you have all the information that you need to begin
4 reaching a decision.

5 As I also told you yesterday, you may not discuss
6 this case among yourselves or with anybody else. The
7 reason you may not discuss it with anybody who is not on
8 the jury, I think is obvious even before I mentioned it
9 yesterday, you have to decide the case based on the
10 evidence, you're the only ones hearing the evidence, and
11 if you discuss what you're hearing with anybody else or
12 communicate with anybody about what you're hearing,
13 there's a risk that they'll say or communicate something
14 that will influence you and that's not evidence. You
15 also can't discuss the case among yourselves until it's
16 time to deliberate and decide because if you start
17 discussing it, you'll start making up your mind before
18 you have all the information you need to do that.

19 As I told you yesterday, you may not read or
20 listen to or watch anything in the media about the
21 case. Everything that you need and everything you're
22 permitted to consider in deciding the case will be
23 presented here in court.

24 This is a recent addition to what I tell jurors.
25 You may not communicate about this case through the

1 internet or social media. You can't blog about the
2 case, you can't post anything on Facebook or something
3 like that, again because of the confidentiality of your
4 thinking and eventually your deliberations. Don't do
5 any research relating to the case. As I said,
6 everything you're entitled to rely on and everything you
7 need will be presented here in court.

8 Now, sometimes I get a question, "Who are all
9 these people in the courtroom?" Well, you know the
10 stenographer, you've met Mr. Hohler, the Deputy Clerk, I
11 have three law clerks, they're recent law graduates,
12 they work and help me a lot and at least one of them
13 will be here all the time, and I have some law students
14 who work for me, too, and you may see some of them at
15 that table from time to time.

16 Let me tell you this about the architecture of the
17 case. In a moment you'll hear the parties's opening
18 statements, the government will go first because it has
19 the burden of proof. As I told you, anything the
20 lawyers say is not evidence, but that's the opportunity
21 the parties have to orient you to what they expect the
22 evidence will be and explain it to you. Then, because
23 the government has the burden of proof, it calls the
24 witnesses first. The government will question the
25 witnesses, the defendant will have an opportunity to

1 cross-examine the government's witnesses, the government
2 has an opportunity for what's called redirect, there's
3 an opportunity for recross, and absent something very
4 unusual, the parties will only have those two rounds of
5 questioning for any witnesses. After the government's
6 presented all of its evidence, the defendant, if he
7 wants to, can call witnesses and present evidence, but
8 as I told you, the defendant has no obligation to prove
9 his innocence or any obligation to present evidence or
10 testify himself. If the defendant presents evidence,
11 the government may present some rebuttal evidence and
12 the defendant, if he wishes, can present some evidence
13 to respond to that. Then we'll come to the closing
14 arguments where the lawyers will argue the evidence as
15 they remember it and urge you to draw certain
16 inferences, then I will give you detailed instructions
17 regarding the law, and then it will be time for you to
18 deliberate and decide the case.

19 As I mentioned earlier, once we start with the
20 evidence, after the parties's opening statements,
21 Mr. Hohler will give you notebooks and you can take
22 notes, but there's a couple of things that I urge you to
23 keep in mind. First, it's important that you listen to
24 the witnesses and watch them as well. It may affect
25 your assessment of credibility. So don't get so

1 absorbed in taking notes that you're missing any of the
2 testimony. But second, when you get back in the jury
3 room, some of you may have detailed notes, some of you
4 may have no notes at all. But the notes aren't
5 transcripts. You probably remember this from school,
6 your notes are not always accurate, they're not ever
7 complete, and so if somebody remembers something and
8 somebody else has got something in a note, it doesn't
9 mean that your memory is wrong and that that note is
10 right. But I do think, in this case, it's appropriate
11 to let you take notes.

12 So unless the parties have something, we'll
13 proceed to the openings.

14 Ladies and gentlemen, I've given the parties up to
15 40 minutes each for their opening. I think we'll hear
16 the government's opening and we'll probably take a brief
17 break, get you something to eat back there, and then
18 we'll hear the defendant's opening.

19 MS. SEDKY: Thank you, your Honor.
20

21 OPENING STATEMENT BY MS. SEDKY:

22 Good morning. I didn't introduce myself
23 yesterday. My name's Mona Sedky and I work for the
24 Department of Justice and my co-counsel, Adam
25 Bookbinder, and I represent the United States in this

1 prosecution.

2 During the course of this trial we will present
3 the evidence that will prove to you that that man, Ryan
4 Harris, sitting next to his lawyer, built a \$1 million
5 business helping people steal, and with his pivotal
6 assistance these people stole and they stole and they
7 stole. In short, he facilitated theft. And we will
8 further prove that he knew exactly what he was doing.
9 He did it on purpose. We will prove to you that he knew
10 full well that these people were stealing and he
11 intended to help them succeed.

12 Now, we'll also show that Mr. Harris has a
13 background in computers and in fact he called himself a
14 "professional computer hacker," and with that background
15 He taught people how to steal internet service from
16 local internet service providers. And we'll hear terms
17 like ISPs, cable company's providers, they're all the
18 same thing, they all refer to the company that provides
19 cable service -- cable internet service to your house or
20 businesses. Charter is a big one in Worcester. Comcast
21 is a big one in Boston. And with Mr. Harris's help,
22 these people lied to their providers about who they
23 were, they masqueraded as legitimate paying subscribers
24 when they weren't and they masqueraded as premium
25 subscribers of faster and more expensive service when

1 they weren't. And in the end, they were able to trick
2 the cable companies into providing them internet service
3 that they never paid for.

4 Now, Mr. Harris, as we will prove, played an
5 essential role in this theft operation. In his own
6 words he called himself "the creator." What did
7 Mr. Harris, "the creator," create? Well, basically what
8 he did was he created and then sold a comprehensive tool
9 kit that provided his customers with everything they
10 needed to steal internet service and he had put a lot of
11 different tools in this tool kit, but the two key tools
12 that you'll hear a lot about during the course of this
13 trial, is he made a customized cable modem and then he
14 wrote, with some help, some customized software to help
15 run that cable modem. And a cable modem, as you'll hear
16 more during the course of the trial, is basically just a
17 black box or a white metal box that's a connector. It's
18 a pretty simple device and it doesn't really serve much
19 purpose other than to connect a computer to the coaxial
20 cable wires that come to somebody's house or business.
21 It just attaches the two things.

22 Well, Mr. Harris devised a customized software
23 program that would reprogram the cable modem so that it
24 was connected to the internet and it would get service
25 without paying. And he provided in his tool kit not

1 just the cable modem and the software, but he provided
2 another key ingredient in this tool kit, he provided
3 access to stolen account numbers that belonged to
4 legitimate paying subscribers from other places all over
5 the country. And what his customers did was they took
6 one of these stolen numbers that they got -- that they
7 accessed with Mr. Harris's help and they input it into
8 his customized cable modem and then they put that modem
9 in their cable jack in the wall and they disguised
10 themselves as that legitimate paying subscriber. They
11 essentially created an exact duplicate. That cable
12 modem, the customized modem that they got from
13 Mr. Harris, became an exact copy or a clone of the modem
14 that belonged to whoever's stolen subscriber information
15 was.

16 And Mr. Harris had a name for this whole process,
17 he called it "cable modem hacking," and you'll probably
18 hear that term used a lot during the trial. Other
19 people refer to it as "modem cloning," "modem spoofing,"
20 and it's all basically the same thing, it's a way to lie
21 to the provider and trick them about who you are and get
22 them to provide service that you don't pay for.

23 Now, Mr. Harris, his customers were quite
24 successful in stealing service. We'll prove that they
25 stole service for week after week and in some cases year

1 after year after year. And one of the reasons that his
2 clients were so successful is that Mr. Harris didn't
3 just create this tool kit and sell it and walk away, he
4 stayed very involved in this operation. This was his
5 full-time job. He kept sharpening the tools in his tool
6 kit, refining them, improving them to make sure they
7 worked. They needed to be cutting edge state of the art
8 in order to work successfully and he made sure that
9 happened. And he also taught people how to use his
10 products, he created a website that had full video
11 tutorials, written instructions, he operated what was
12 essentially an on-line help desk to answer questions for
13 how to get these people to be able to use his tool kit
14 effectively.

15 Now, this case is not about a man who sold a
16 harmless product like a screwdriver and then found out
17 later that maybe someone that he sold it to happened to
18 use it to rob a bank. We'll prove that is not this case
19 at all. This case is about how that man knowingly and
20 intentionally facilitated theft. He knew exactly what
21 his customers were doing and he wanted to make sure they
22 were successful. And he played a key role in this theft
23 operation. In his own words, he was "the creator."

24 And at the end of this trial, through testimony
25 and documents and other evidence, we will prove to each

1 one of you beyond a reasonable doubt that Ryan Harris is
2 guilty of the crimes charged in the indictment. And the
3 Court read to you the indictment, which describes these
4 various charges in some amount of detail. So I wanted
5 to spend the next half an hour unpacking sort of four
6 points.

7 First, I'd like to talk about who Ryan Harris is
8 and get a little bit of background about him. Then I'd
9 like to talk about what is his cable modem hacking
10 operation, what was the business, how did the products
11 work? Third, I'd like to talk about what did Harris
12 know and intend in this whole cable modem hacking
13 operation? And last, I'll talk to you about how it all
14 ended, what happened in the end?

15 So first let's talk about who is Ryan Harris?
16 Well, as you've heard in the indictment, Ryan Harris,
17 and as we'll prove, used the alias "DerEngel," which
18 you'll hear is German for "The Angel," and he was also,
19 as we mentioned, the creator, he called himself "the
20 creator." So -- and we've, um, produced a few posters
21 where we've excerpted some quotes that Harris made in
22 various internet on-line communications with people and
23 you'll see these during the course of the trial in
24 various exhibits, and we've excerpted a few of these and
25 then blown them up so you can see them.

1 (Puts on easel.)

2 MS. SEDKY: Woops. I'm better with computers
3 than easels.

4 So here's a sample quote. He says: "I created
5 the entire cable modem hacking scene. If I didn't
6 exist, there would be no cable modem hacking."

7 (Takes off easel.)

8 MS. SEDKY: Well, what was he doing before he
9 became the creator? Well, he was an avid gamer. And
10 many of you may know what a "gamer" is, but I didn't,
11 and it's someone who is an avid player of on-line
12 computer games involving the computer. So you would
13 play with people all over the country or all over the
14 world over the internet. And he spent hours in his
15 apartments -- and he lived in San Diego, Phoenix,
16 Portland, he spent some period in Hong Kong, playing
17 computer games, and he thrived on getting faster and
18 faster internet service for his games.

19 Now, you'll learn that faster internet service
20 costs more, providers have to spend more money to
21 provide faster service, so they charge higher fees, and
22 we'll talk more about that later. Well, we'll prove
23 that Mr. Harris, he didn't want to pay these higher
24 fees, he wanted a faster service for free, and since he
25 has this technology background, we'll prove that he came

1 up with a way himself to steal it, and then once he
2 devised this technology for how to steal the internet
3 service, to get faster and faster service without
4 paying, he used it for himself, he played his games and
5 downloaded modems, he did what he did, and then he
6 decided that he could package it up and he could sell it
7 to other people and make money charging other people to
8 steal. Essentially what he did, the evidence will show,
9 is that instead of having his customers pay their
10 monthly fees to their subscriber, he decided he would
11 have them pay them to him, they'd pay him a one-time fee
12 and then he would give them this -- the tool kits that
13 they would steal service with it.

14 Now, although Mr. Harris called himself "the
15 creator," he actually had some help and he had help from
16 two people in particular. He recruited a computer
17 programmer by the name of Isabella Lindquist, and she
18 was living in Kentucky at the time, and he also
19 recruited his roommate and friend, a man by the name of
20 Craig Phillips, who was living in San Diego. Now, both
21 Ms. Lindquist, the programmer, and Mr. Harris -- and, by
22 the way, Craig Phillips was more involved in the
23 business side of the operation, he helped to set up some
24 of the bank accounts and do things like that. So you'll
25 hear from Ms. Lindquist, who was the programmer, and

1 you'll hear from Mr. Phillips, who was helping out with
2 the business, they're going to come in and they're going
3 to sit on the witness stand and they're going to testify
4 to you about what was going on in this cable modem
5 hacking operation.

6 Now, as you'll learn, Mr. Phillips pled guilty to
7 committing crimes associated with this cable modem
8 hacking operation, and as you'll also learn, as part of
9 his guilty plea, he has agreed to cooperate in this
10 prosecution. And so we will corroborate his evidence
11 with evidence from the testimony of other witnesses,
12 documents and other evidence. And Ms. Lindquist, as
13 you'll also hear, she was granted immunity from
14 prosecution, so that means that she cannot be prosecuted
15 as long as she tells the truth for anything that she
16 says on the witness stand, and we'll be corroborating
17 her testimony as well with other witnesses, documents,
18 and other types of evidence. And there will be another
19 witness who will come in and he's one of the computer
20 users, he actually acquired these products and then he
21 lived in Worcester and he used the products, as he'll
22 testify, he used them for several years and he was able
23 to get ten times faster internet service without paying
24 a nickel for it.

25 Now, he will come in and he will testify that he

1 stole service, but he'll also testify about other pretty
2 nasty hacking crimes that he committed, and you'll learn
3 that he pled guilty to a whole series of hacking crimes,
4 one of which included his use of this stolen internet
5 service. Now, he's already served his sentence in
6 connection with that guilty plea, but he did have a
7 cooperation term in it and we too will be corroborating
8 his testimony with the testimony of other witnesses and
9 documents and other evidence. So that's Harris's cable
10 modem hacking sort of group.

11 And now I'd like to talk about what his cable
12 modem hacking operation was all about, and I've got sort
13 of two themes, the first is just to give you a sense of
14 the business overview and then I'd like to unpack the
15 tool kit a little bit for you and explain, hopefully in
16 not too horrible detail, how the different tools worked
17 to steal service.

18 Well, let's take look at his business generally.
19 Harris ran a full service soup-to-nuts operation. He
20 provided everything his customers needed, he provided
21 all of the necessary hardware, you'll see the cable
22 modems and cables, he provided all of the necessary
23 software to run it, he provided access to a steady
24 supply of these stolen subscriber numbers that his
25 customers needed, and then he taught his users how to

1 use all of these products. He had these video tutorials
2 on his website. We'll prove that he had these
3 instructions and manuals. In fact, he wrote a book
4 under his alias, DerEngel, called "Hacking the Cable
5 Modem," to help his customers figure out how to use all
6 of his products. And he also ran sort of like an
7 on-line help desk on his website, so users could post
8 questions about, "How do I get this to work? Would
9 somebody help me?" and then you'll hear Lindquist, the
10 programmer, testify that she would then go try to answer
11 their questions, and there was this ongoing dialogue to
12 help people figure out how to use these devices he was
13 selling.

14 In the end what we'll prove is this was a turnkey
15 theft kit, all his customers had to do in the end was
16 plug in the customized cable modem they got from Harris,
17 go to the websites or use the software they provided to
18 help them get the stolen subscriber account numbers,
19 input those numbers in the cable modem, and turn it on,
20 and then you got free service, unless and until one of
21 the ISPs, the cable companies, was able to catch them
22 and knock them off. And we'll prove that even
23 sometimes, when his customers got knocked off, he was
24 able to help them get back on, back on the network.

25 Now, we'll prove that Mr. Harris, as we mentioned,

1 stayed very involved in this operation. This was his
2 full-time job. He kept sharpening the tools. He needed
3 to keep them cutting edge. And we'll prove that he
4 played what was essentially a game of cat-and-mouse with
5 these ISPs. We'll have testimony from one of the
6 providers, Charter, who will come in and he'll tell you
7 that Harris's operation was a big problem for Charter
8 and they spent a lot of time trying to figure out and
9 detect who of Harris's customers were on their network
10 and try to kick them off. So the cable companies, the
11 providers, were coming up with these security measures
12 that they were putting in place to try to detect and
13 block Harris's customers from their network, and Harris
14 had to stay one step ahead of the ISPs, so he kept on
15 top of all the info he could get about what the ISPs
16 were doing and tried to figure out their security
17 measures, and then what he would do, we'll prove, is he
18 would tweak his products in response. He would tell
19 Isabella Lindquist, and she'll testify, she's the
20 programmer, that he would tell her, "Hey, one of these
21 ISPs came up with this new security measure, go
22 reprogram the software so that we could defeat it." And
23 so she did it, she did what she was told, and she came
24 up with these new work-arounds and then she would give
25 the code to Mr. Harris and he would issue a new update

1 to his software program so that all of his customers
2 were up-to-date and cutting edge, and then the process
3 would continue, like cat-and-mouse, the ISPs would then
4 try to come up with another security measure and the
5 game would continue. So he stayed very involved in this
6 process and he also stayed involved trying to teach his
7 customers how to use his products.

8 He ran this website, and you heard about it in the
9 indictment, TCNISO.net, and the website had all of these
10 video tutorials and instructions on it to help his
11 customers figure out how to do this thing, and his
12 website also provided what was essentially, um, an area
13 of the website that was dedicated to providing access to
14 the stolen numbers. So that's sort of --

15 MR. MCGINTY: Objection, your Honor.

16 MS. SEDKY: So that's sort of --

17 THE COURT: I'm sorry. The objection is
18 overruled. The jury's been instructed that this is not
19 evidence, but it's essentially a preview of what the
20 government says will come into evidence and what it will
21 prove. So the objection is overruled.

22 MS. SEDKY: Well, let's unpack the tool kit a
23 little bit.

24 So there are three terms -- we need to take a
25 short technical detour before we talk about the tools.

1 And bear with me. We'll all get on the same page. And
2 if you already know all of this, then I apologize in
3 advance. Three terms that you're going to need to know
4 during this trial, "ISP," "cable modem," and "MAC
5 address."

6 So "ISP," we've already heard about, those are the
7 cable companies, the providers that provide the service
8 to people's homes and businesses. "Cable modems," those
9 are the black devices or white devices that have
10 blinking lights on them, they attach one end to the
11 computer, and another end to the coaxial cable wire that
12 comes to people's houses. And in each -- as you'll hear
13 from our witnesses, every single modem that has ever
14 been manufactured at the manufacturing plant is given a
15 unique 12-digit number and it's called a "MAC address,"
16 "Media Access Control." It has nothing to do with Apple
17 MacIntosh. A MAC address. And you're going to hear a
18 lot about MAC addresses because they play a key role in
19 how an internet subscriber, an ISP, identifies who its
20 legitimate valid paying subscribers are.

21 And so this MAC address, it's like a serial
22 number, and it's never supposed to change. And so when
23 a person decides, "I want internet service," and they
24 move into their apartment and they call up the cable
25 company and they say, "I'd like to subscribe to

1 service," we'll have testimony that the cable companies
2 send out a technician usually, they bring the modem out,
3 and they already know the modem's MAC address because
4 it's their modem that they're renting to the customer,
5 and so they've recorded that this MAC address belongs to
6 this new subscriber. So then later, when the new
7 subscriber turns on their modem and their computer,
8 their modem actually sends through the internet its MAC
9 address and the cable company, on the other end of the
10 network, looks at the MAC address, checks their records,
11 and says, "Oh, I recognize this MAC address, this belong
12 to this new subscriber, I am going to now provide the
13 level of service that this person has paid for." And
14 if, conversely, they do not recognize the MAC address,
15 then no service. So no valid MAC address, no service.

16 So that's basically "ISP," "cable modem," "MAC
17 address," those are the three terms that you need to
18 know. So how do these terms all come together, what
19 role does this play in cable modem hacking?

20 Well, Mr. Harris, as we'll prove, devised a way to
21 help his customers steal MAC addresses that belong to
22 legitimate paying subscribers and then take that stolen
23 MAC address and reprogram it into the customized modem.
24 So essentially what they did was they made the
25 customized modem look like an exact duplicate or a clone

1 of the modem that belonged to the paying subscriber.

2 So there were two core functions of Harris's tool
3 kit, the MAC stealing and the MAC changing, and I'd like
4 to talk about each of those. So we'll prove that Ryan
5 Harris devised a software program that would eavesdrop
6 on his neighbors -- so his customers would get this
7 program and it would eavesdrop on their neighbor's
8 internet connections and it would find out their MAC
9 addresses and take a copy of it, and it would store the
10 copy, the copy of the stolen MAC address, for the
11 customer to use later. And Mr. Harris, as we'll prove,
12 he came up with a very clever name for the software
13 program, he called it "CoaxThief." Now, "coax" stands
14 for the coaxial cable that comes to your house and
15 "thief," well that pretty much stands for itself. So
16 that's the cable stealing -- the MAC stealing part of
17 this.

18 And he didn't just help with the MAC stealing, he
19 also helped with MAC trading or MAC swapping, and you'll
20 hear a lot about that, too. And I talked earlier about
21 how he had this website, TCNISO.net, and we'll prove
22 that on the website there were different forums that are
23 sort of like a bulletin board where people could have a
24 certain topic and post certain information under that
25 topic heading, and a bunch of these forums essentially

1 operated as a black market for people to trade stolen
2 MAC addresses. And this black market had two important
3 benefits. One, for people who didn't want to bother
4 with CoaxThief -- by the way, I forgot to mention that's
5 also called a "sniffer program." You may hear witnesses
6 and other evidence during the course of this trial talk
7 about "MAC sniffing." That's the same thing as the MAC
8 stealing, it's sniffing the wire and eavesdropping and
9 taking a copy of the MAC address. So that's just
10 another little term.

11 Okay. So for people who didn't want to sniff
12 their own MAC addresses, they didn't want to bother with
13 CoaxThief, they could go to Mr. Harris's website and try
14 to get one there. And it had another advantage, um,
15 because as it turns out, you can't use a MAC address
16 that you've stolen from your own neighborhood. It just
17 won't work. And we'll prove that internet providers,
18 they won't provide service to two MAC addresses that are
19 being used at the same time in the same neighborhood.
20 So if I'm one of Harris's customers and I have stolen a
21 copy of my neighbor's MAC address, and I'm on the
22 network using that stolen MAC address, that neighbor --
23 if that neighbor tries to get on, the neighbor's going
24 to get knocked off. Or if the neighbor's on first and I
25 try to get on, it's not going to work, I'm going to get

1 knocked off. Or what might happen is we'll both get
2 knocked off. But either way it won't work.

3 And so Ryan Harris knew this. He knew, and we'll
4 prove, that his customers needed to get out-of-town MAC
5 addresses and the way they were going to get out-of-town
6 MAC addresses is on this black market, these forums, and
7 they also needed to get replacement MAC addresses
8 because sometimes the MAC addresses that they had
9 stolen, whether they had sniffed them themselves or
10 they've already got them on the website, they stopped
11 working, and they might have stopped working because the
12 cable companies figured it out, they figured out it was
13 a cloned modem, and we'll prove that sometimes they
14 would blacklist a particular MAC, but in any case they
15 needed a steady diet of fresh stolen MAC addresses. So
16 he kept this website up and running to make sure that
17 people could have this swapping, this on-line swap meet.

18 MR. MCGINTY: Again, your Honor, objection.

19 THE COURT: Overruled.

20 MS. SEDKY: So we've talked about the MAC
21 stealing and the MAC trading, now let's talk about the
22 second functionality, which is the MAC changing.

23 So once -- Step 1 is you get your out-of-town
24 stolen MAC address and Step 2 is you've got to get it on
25 the modem. So Mr. Harris had this customized modem and

1 this customized software program and the customer took
2 the stolen MAC address and input it into the customized
3 modem and it became essentially the customized modem's
4 new MAC address and that's how the modem was cloned.
5 And in doing that, that's how his customers were able to
6 trick the cable companies and steal service from them
7 because the cable companies saw the MAC address, the
8 stolen MAC address, and they thought it was a valid
9 legitimate subscriber and so they provided the service.

10 Now, we'll prove that Mr. Harris actually helped
11 two different kinds of computer users steal service in
12 two different ways. He helped some users who were not
13 subscribers at all, they subscribed to no internet
14 service, and with his help they were able to steal free
15 service without paying anything, and he called that
16 "theft of service," and that was the term that he used.

17 Now, there was a second type of stealing that
18 we'll prove he did and there were some of his customers
19 who actually were paying subscribers, they paid for the
20 slowest, cheapest, bare-boned service, usually, and with
21 Mr. Harris's help they were able to get much faster,
22 sometimes ten times faster, as we'll show, service
23 without paying any of the extra premiums, and he had a
24 name for this, too, he called this "uncapping." And
25 you'll hear people talking about "uncapping" and "theft

1 of service" as if they're different, but it's basically
2 that they were getting much faster service without
3 paying any of the extra premiums that they were supposed
4 to pay.

5 And you might be wondering well why -- what's with
6 this whole uncapping, why do the cable companies charge
7 more money for faster service? Well, we will have some
8 testimony about that and they will explain that cable
9 companies have to charge more money to provide faster
10 service because there's only a finite amount of internet
11 service that can go to any given neighborhood. It's
12 fixed. It's like a pipe. And so if there's somebody on
13 that pipe who's taking up a whole lot of internet
14 service and needs a lot of fast service, it's going to
15 slow other people in the pipeline in the neighborhood
16 down.

17 It's sort of like -- and I was thinking about this
18 the other day, it's like my water pressure in my house.
19 So if it's dinner time and I'm standing at my kitchen
20 sink and I've got my kitchen faucet on, I've got my
21 dishwasher running, I've got my load of laundry in the
22 basement, and my 13-year-old daughter decides this is a
23 good time for her half-an-hour-shower ritual. So she
24 goes up and she starts taking her half-an-hour shower.
25 Well, the water pressure in my sink is going to go down

1 or her shower water pressure is not going to be so
2 great. But something's got to give. And internet
3 service is the same way. So if somebody needs faster
4 and faster service, in order to keep everybody else on
5 the network from slowing down, the internet companies
6 have to come out, as we'll prove, and lay more cable and
7 add more equipment, and that costs them money and so
8 they charge higher rates for faster service, and that's
9 the background behind "uncapping."

10 So, exhale, the technology piece is over. And
11 this case is actually, as we'll prove, it's not a
12 complicated case, it's actually about two things. We
13 will prove that that man essentially he knowingly and
14 intentionally facilitated theft. That's what he did.
15 He helped people steal by lying to the cable companies
16 about who they were.

17 So we've talked about who Harris is and we've
18 talked about his cable modem hacking operation, the
19 business generally, and now we've unpacked the tool kit
20 quite a bit, and now let's talk about Mr. Harris's
21 knowledge and intent.

22 We will prove, during the course of this trial,
23 that Mr. Harris knew exactly what his customers were
24 doing, he knew that they were stealing service, and he
25 fully intended to help them succeed. We'll have

1 testimony from insiders, Lindquist and Phillips, who
2 will come in and they will testify about the cable modem
3 hacking operation, they were involved in it, and they
4 will say that it was common knowledge that people were
5 stealing service and that they were worried about
6 getting caught, and they will tell you that they talked
7 to Harris openly about the fact that the customers were
8 stealing service. In fact -- and I'm going to put up my
9 second blow-up here.

10 (On easel.)

11 MS. SEDKY: We'll show you an excerpt of a
12 conversation between Ryan Harris and Craig Phillips --
13 and that's the roommate who was on the business side of
14 the operation, and Phillips is excited because he's
15 proposing to Harris, he's telling him about this deal
16 he's about to break, he's trying to cut a deal to sell
17 10,000 copies of this cable modem hacking software to
18 one person, and he's telling Harris about it and so
19 Phillips says, "They want to use these," and I put in
20 this part, "the 10,000 Sigma software licenses," um, and
21 you'll see that later when you see the actual document.
22 "They want to use these to steal service. We have to
23 show them how to steal service, too." And Harris
24 responds, "Sounds good to me." And they come up with
25 this \$2 apiece price elsewhere in the conversation. He

1 says, "For 20k, man, I'll give them unlimited
2 licenses." So they talked openly about the fact that
3 their customers were stealing services.

4 And we'll also prove that Harris, himself, he used
5 these products. His roommate will come in and testify
6 that while they were living together and before, his
7 software, they were using it together. They got ten
8 times faster service without paying a nickel. And he
9 tells -- and he talks about his own use. You'll be
10 reading chats where he's very up front about telling
11 people, "I'm on an uncapped modem" and "Isn't this free
12 service great." So you can look at Harris's personal
13 use.

14 And then let's get back to the tool kit. What do
15 we have in that tool kit? Well, let's look at the tools
16 in it. There's the MAC sniffer, CoaxThief. There's the
17 black market, the forums where you trade the MAC
18 addresses from out of town. There are these other
19 features that help -- well, we'll talk about those
20 later. But so you've got the black market, you've got
21 all these instructions, you've got his book, and taken
22 together we'll prove to you that there is no other
23 legitimate use that's commercially viable for this tool
24 kit other than to steal service.

25 The other thing is take a look, not just at the

1 tool kit, but Harris's continued involvement. We will
2 prove to you that Harris stayed very, very involved in
3 this operation. As I mentioned earlier, he kept
4 tweaking and sharpening the tools in his tool kit. He
5 stayed abreast of the ISPs's security measures and kept
6 tweaking his products to come up with these work-arounds
7 and he ran his website so that he could make sure that
8 it was up and running to allow people to trade their MAC
9 addresses. And so he kept sharpening the tools, keeping
10 them on the cutting edge, making sure that they worked.

11 So Harris not only used the products for himself
12 and helped people to sort of stay involved with it, but
13 he also helped his customers hide, he helped his
14 customers hide their involvement, and we'll prove that
15 he devised features into his cable modem software that
16 would make sure that the cable companies couldn't detect
17 them. So he had a program that you'll see called
18 "Stealth Mode," and "Stealth Mode" is what it sounds
19 like, it basically allowed the modem, the customized
20 modem to remain invisible.

21 And Lindquist, the programmer, she'll talk to you
22 about a program that she coded herself, she wrote this
23 program, and it was an antiprobing feature. And
24 antiprobing, the way that worked, is that the ISPs, they
25 probe, they send out questions over the internet because

1 they want information about who's on their network, they
2 want to see, and when they probe, if they find out that
3 someone's got a cloned modem, they knock that person off
4 the network. And so Lindquist was told to figure out a
5 way to work around this and she devised an antiprobing
6 feature that she put into these cable modems that would
7 prevent the cable companies from effectively probing and
8 testing and finding these cable modems on their network.

9 Now, we will prove that Harris not only helped his
10 customers hide, he hid himself. He admitted hiding.
11 You can just take a look at his own words. In this
12 book, "Hacking the Cable Modem" -- (On easel.)

13 This goes to a different one. I'm sorry.

14 In his book, "Hacking the Cable Modem," he says --
15 and I didn't bring my reading glasses and now it's going
16 to be hard for me to read. He says he's living in his
17 clandestine residence. Oh, I'll find it. There it is.
18 He says: "I make my living by pioneering hacking
19 techniques and writing software programs from my
20 clandestine residence in Hong Kong." And we will prove
21 that he wired \$50,000 to Hong Kong. He had accounts
22 there. And we will prove that he, in other chats that
23 you'll see, he calls himself, he says, "I'm a
24 professional hacker, so I get paranoid just to check
25 who's at my front door." And he didn't just talk about

1 being paranoid and not wanting to check his front door,
2 he used an alias in his postings, on his website, in his
3 e-mails with his customers, he always used his alias,
4 "DerEngel." And you'll hear from Lindquist, the
5 programmer, that she worked with him hand and glove, day
6 in and day out, for over a year before he would tell her
7 his real name. She only knew him as "DerEngel."

8 So he not only tried to hide himself, but we will
9 also prove that he tried to protect himself. And what
10 he did was every so often he would sprinkle in his book
11 or on his website these disclaimers and there's a sample
12 of one right in the back there. (Indicates.) They
13 usually say the same thing and they say something like
14 "We don't condone theft of service." That's usually the
15 classic line he used. What we'll prove -- the insiders
16 will come in and they'll testify that those disclaimers
17 were a joke. They laughed about them. They will prove
18 -- the insiders will come in and they will testify that
19 they knew that their customers were not following the
20 disclaimers and we will prove that Ryan Harris himself
21 wasn't following his own disclaimers, he was stealing
22 internet service for years.

23 So why was he doing all of this? Why on earth --
24 what was motivating Ryan Harris? Well, we will prove
25 that Ryan Harris was motivated mostly by money. He was

1 determined to be a millionaire. Here are a couple of
2 quotes in conversations that he had with Craig
3 Phillips. In one he says -- and these typographical
4 errors, I have to say this for my mother's sake, because
5 she was very particular about spelling, that those are
6 how I found them. That's not how I spelled them. "We
7 will start on our path to becoming millionaires," he
8 says. And then in another chat he says, "We're going to
9 make so much money and then we're going to buy a really
10 nice house with a pool." And I think that's a smiley
11 face and a modicon or something. And we'll actually
12 have some testimony about what these different signs
13 mean and different phrases on the internet mean.

14 So he wanted to make money and he had a whole
15 pricing structure for these -- this tool kit wasn't for
16 free. He would buy, as we'll prove, he would take \$20
17 refurbished modems and he'd sell them for about 80
18 bucks, once he put his software on them. You could buy
19 the modems -- you could buy the software by itself, if
20 you wanted to use your own modem, he had a different
21 price for his book. He had a membership fee where if
22 all you wanted was access to those trading MAC
23 addresses, you could pay a separate fee for that. So he
24 was monetizing this whole tool kit because he wanted to
25 make money.

1 Well, he had another motive, he had a lot of
2 animosity toward the providers, and we'll prove that.
3 In fact, let's take a look at his book again. He
4 dedicates his book. On the dedication page, he says:
5 "This book is dedicated to all the righteous hackers
6 that have been silenced by greedy corporations." And he
7 says later in the book, he talks about why he's doing
8 all of this. He tells you. He says: "My goal was
9 clear" -- I'm sorry. I really should have brought my
10 reading glasses. Okay. "My goal was clear. I wanted
11 to uncap as many modems as possible. The war had
12 begun." In his own words, he's declaring war against
13 the providers.

14 So what happened in the end? We've talked about
15 who Harris is, we talked about his cable modem hacking
16 operation, we talked about what he knew, what he
17 intended, well, what happened? Well, we'll prove that
18 in the end he reached his goals. He reached -- by --
19 through his so-called "war" on the cable companies, he
20 ended up with over 10,000 customers and he grossed over
21 a million dollars in sales over a six-year period. And
22 that's how this all ended.

23 So during the course of this trial we will present
24 evidence to you in the form of testimony of witnesses,
25 documents, other types of evidence, that will prove to

1 each of you beyond a reasonable doubt that that man,
2 Ryan Harris, knowingly and intentionally facilitated
3 theft. He designed and sold a comprehensive tool kit
4 and he stayed very involved, day in and day out,
5 sharpening those tools, refining them, perfecting them,
6 keeping them at the cutting edge to make sure they
7 worked. He knew full well that his customers were
8 stealing service and he wanted to make sure they were
9 successful in doing it. And in the end he played an
10 enormous role in all of this, in his own words, he
11 called himself "the creator."

12 So at the end of the trial, based on the evidence
13 that we present to you, Mr. Bookbinder and I will ask
14 each of you, on behalf of the United States, to return a
15 verdict of guilty, guilty of committing wire fraud,
16 guilty of aiding and abetting other people or helping
17 other people in committing wire fraud, and guilty of
18 conspiring to commit wire fraud. So thank you very much
19 for your time.

20 THE COURT: Ladies and gentlemen, that
21 concludes the government's opening statement, the
22 preview of what it expects the evidence will be and
23 show. Um, I'm going to give you a break now for about
24 15 minutes. There should be something back there for
25 you to eat. And then you'll hear, I understand, the

1 opening statement from the defendant, and then we'll go
2 to the first witness.

3 The Court is in recess for the jury.

4 (Jury leaves, 10:50 a.m.)

5 THE COURT: Is there anything?

6 MR. MCGINTY: There is, your Honor. There's a
7 motion for a mistrial.

8 THE COURT: Why is that?

9 MR. MCGINTY: And the motion for the mistrial,
10 your Honor, is founded on what seemed to have been
11 boundaries that were clearly set by the Court that were
12 exceeded.

13 Yesterday there was a conversation about
14 categories of postings, um, reflected on the website of
15 TCNISO. There were specific entries for MAC address and
16 MAC address exchanges, there were headings for those,
17 and the Court said that this was not to be -- or the
18 government wasn't to try to put this in, it could be
19 addressed later, the Court was disinclined to permit
20 that, many of those specific headings appeared to be for
21 the truth of the matter and were not, um -- and the
22 Court was going to consider whether ultimately they
23 would be ruled inadmissible.

24 Notwithstanding that, the government has packaged
25 all of those into conclusory statements that go like

1 this. Um, that Mr. Harris provided access to stolen
2 account numbers. That there was a black market in MAC
3 addresses. That Harris ran a forum in a -- I'm sorry, a
4 forum where you trade in MAC addresses. And that he
5 maintained a black market in it. That's just a few of
6 the characterizations that synthesize what the Court has
7 ruled --

8 THE COURT: But I -- and I'll hear from the
9 government, but I understood that the government had
10 evidence, in addition to the posts on which we were
11 focused yesterday, that it was going to rely upon to
12 prove those points.

13 MR. MCGINTY: But the question, your Honor, is
14 whether a third-party hearsay source of what's otherwise
15 inadmissible fuels that?

16 THE COURT: Well, if it comes from
17 Mr. Phillips or Ms. Lindquist, based on what I've heard,
18 it's not hearsay, it's admissible under 801(d)(2), it's
19 an --

20 MR. MCGINTY: But what's admissible? I mean,
21 they may know there's a forum. They're not the sponsors
22 of the content of the forum. The sponsor of the content
23 of the forum is the person who posts the thing on the
24 forum. That's the speaker. That's the declarant. So,
25 um, what appears to be a forum -- we've made the

1 argument that a forum, um -- that Mr. Harris has
2 statutory protection from the consequences of the
3 content of the forum.

4 THE COURT: Yeah, and as I've said, that's
5 Section 230. I haven't been persuaded that that
6 provides any defense in a criminal case.

7 MR. MCGINTY: But irrespective of that,
8 there's a question of whether those are adoptive --
9 whether in any respect there's an adoption of the
10 content of what those contributors put on the posts.
11 And to have someone come in and say that in their sum
12 these appear to reflect the following categories of
13 activity, um, seems to me just another layer of a
14 problematic presentation.

15 THE COURT: And what does the government say
16 in response?

17 MS. SEDKY: Your Honor, we have ample
18 testimony from our users who said that they went to the
19 forums and that's how they got their MAC addresses, and
20 they will testify repeatedly that they went back to the
21 forums again because their MAC address stopped working.
22 So where did they go? They went back to the forum.
23 They got another MAC address. They will testify about
24 their own personal use of the forums to acquire stolen
25 MAC addresses from out of town. We have many witnesses

1 who will testify to that.

2 MR. MCGINTY: Can I respond to that? Because
3 that's simply not the case.

4 THE COURT: What's not the case?

5 MR. MCGINTY: Let's go through the witnesses.
6 Let's go through the witnesses.

7 MS. SEDKY: Okay.

8 MR. MCGINTY: Mr. Larosa says, "I purchased
9 multiple modems and products from TCNISO. I obtained
10 the MAC addresses through persons who I shipped these to
11 who exchanged them with me." That's Mr. Larosa.

12 Mr. Madeira says -- in a recent debriefing, says
13 that he did not use a MAC address or a configuration
14 file. He says, "I bought the product. I attached it.
15 It didn't work. I took an update from the website,"
16 whatever the update would be, "I took the update and
17 then it worked." He did not use a MAC address. He did
18 not change the configuration file.

19 The third person, um -- I'm sorry.

20 THE COURT: Well, I'll let her sit while you
21 stand and then you'll sit when she stands.

22 MR. MCGINTY: The third person is Mr. Hanshaw
23 and Hanshaw has two charges or two separate accusations
24 that he's made relative to when he's gotten these
25 materials. One of them is he downloaded software in

1 2005, no one would have known about that, and the second
2 was that he snookered Isabella Lindquist out of getting
3 the raw code for a Sigma software, um, which, by the
4 way, he got from her by offering to pay \$100 for it and
5 she acquiesced to that. So she made her own separate
6 deal which he, in turn unsurprisingly, double-crossed
7 her. How is that in furtherance of the conspiracy?

8 So where of the witnesses -- those are the three.
9 Which of those witnesses is going to say, "I went to the
10 forum. I posted on the forum. I got a MAC address from
11 the forum." So this is --

12 THE COURT: All right. Okay. That gives me
13 the essence of it. Go ahead.

14 MS. SEDKY: I'll tell you the two witnesses.
15 Mr. Hanshaw will testify that he went to the forums and
16 that's how he got his MAC address. And whatever
17 Mr. Harris -- whatever Mr. McGinty has to say about how
18 he acquired the software program or the modem, um, he
19 certainly got the MAC addresses from the web forums
20 repeatedly. And Mr. Phillips was a personal user of the
21 product himself while and after he was living with
22 Mr. Harris and he will testify that that is how he got
23 his MAC addresses. He went to the TCNISO website and he
24 got MAC address after MAC address. That will be his
25 testimony.

1 THE COURT: Okay. The motion for a mistrial
2 is denied. The jury's been informed, now multiple
3 times, that what the lawyers say is not evidence. The
4 opening, which was done in a dispassionate way, um, laid
5 out what the government says the evidence is going to be
6 and what they'll prove. I didn't discern any reference
7 to matters that I directed the government not to refer
8 to or, um, anything the government had agreed not to
9 mention in its opening. I had understood, and I now
10 understand better, that the government anticipates it
11 has evidence that is admissible and isn't subject to
12 open, unaddressed or undecided motions in limine to
13 prove those points.

14 So given the limits that have been explained to
15 the jury about the purpose of opening statements and my
16 sense that the government has a good faith basis for
17 believing that it has evidence that will demonstrate
18 what was described, that I don't see a risk of unfair
19 prejudice at this point.

20 I think this is true of every case, um, I have a
21 vague sense, given the nature of this case, that maybe
22 what the witnesses have said before will not perfectly
23 predict what they say in court. We'll see. And, you
24 know, if the government doesn't have evidence or
25 evidence sufficient to prove some or what it has

1 represented, I expect that an experienced defense
2 counsel will point that out. You know, they promised
3 you in their opening that they're going to prove there
4 was a black market. You've got no evidence of that.
5 We've heard no evidence of that.

6 So the motion for mistrial is denied. I'm
7 listening to all of this and some of this conceivably
8 could be relevant to a Rule 29 motion for acquittal,
9 although not all of the disputed evidence in this motion
10 for mistrial goes to the elements of the offense, um, or
11 is the only evidence relating to the elements of the
12 offense, as I understand it.

13 All right. It's now 11:00. Why don't you all
14 take 10 minutes. And, Mr. McGinty, you'll get your
15 chance to make an opening statement, not a closing
16 argument.

17 The Court is in recess.

18 (Recess, 11:00 a.m.)

19 (Resumed, 11:10 a.m.)

20 THE COURT: Okay. We will get the jury.

21 (Jury enters, 11:10 a.m.)

22 THE COURT: Ladies and gentlemen, we're now
23 ready to hear the defendant's opening. Once again, as
24 I've told you, whatever the lawyers say is not
25 evidence. This is the opportunity they have to either

1 tell you what they expect the evidence will be or to
2 emphasize certain points they hope you will keep in
3 mind.

4 MR. MCGINTY: Thank you, your Honor.

5

6 OPENING STATEMENT BY MR. MCGINTY:

7 Good morning, members of the jury. My name is
8 Charles McGinty. Also with me is Christine Demaso, who
9 is seated next to Mr. Harris. And it is our singular
10 duty and our singular privilege to represent Mr. Harris
11 in the course of this case.

12 I want to start by focusing on something the
13 government made much of and it's important for us to put
14 this case into a concrete perspective and focus on
15 what's going to be at issue here. The government talked
16 about Mr. Harris's help. All the time, Mr. Harris's
17 help. What Mr. Harris's did to help people steal cable
18 service. And when it talked about his help, it had it
19 unhinged, separated from the three witnesses you're
20 going to hear from who are in a position to testify
21 about whether they got help from Mr. Harris or not. And
22 of those three, two of them didn't know Harris, never
23 communicated with him, and a third of them Harris said
24 to him, in the only communication there's any record of,
25 "I don't know you." The person offered to be a

1 moderator in connection with the forum and Harris said
2 to him, "I don't know you," and put him off.

3 So of the three that were getting help presumably,
4 for the government to make its case about the three acts
5 of wire fraud, of those three, none of them got help
6 from Mr. Harris. More specifically, one of them was
7 Mr. Madeira. Mr. Madeira changed his story recently.
8 He had originally talked about how he had gotten a modem
9 and he uncapped the modem. What he says now is he got a
10 modem and what he didn't do is to change his MAC or to
11 change his configuration file. In other words, he
12 didn't get any help, he didn't do anything to change his
13 presentation to the ISP or the cable company.

14 In the government's indictment, the critical
15 element here in its allegation relating to Mr. Madeira
16 is that he had cloned his MAC address. We now know he
17 didn't. We now know he did not. Not only did he not
18 get help, he didn't clone his MAC address. Of the
19 three, two.

20 The second one is Mr. Larosa. What we know about
21 Mr. Larosa, from what he has said, is that he bought a
22 number of products from Mr. Harris. Not once did he
23 communicate with Harris or anyone at TCNISO relating to
24 those products. To make them work what he did was he
25 distributed products to different parts of the country,

1 to friends of his, and they exchanged identifiers to
2 permit him to do that. So what happens with Mr. Larosa
3 is that there is no help from Mr. Harris, there's no
4 help from TCNISO.

5 The final person to testify is a young man who
6 will testify that he, on two occasions, got software.
7 One time he got it by downloading it off the internet.
8 He didn't get help from anybody, he simply downloaded it
9 from the TCNISO website. The second time he got
10 software, he got it not from Harris, not from a call to
11 Harris, he got it from Isabella Lindquist, who was the
12 creator of the software, and he did it by deceiving
13 her. You see, he had somehow hacked into her web page
14 or had found some other way to get the source code on
15 which she was working on. She was deceived into
16 believing that he had the source code and she permitted
17 him to get the balance of the source code in exchange
18 for what she wanted for that, which was \$100. Harris's
19 involvement in that, Harris's help with that? Zero.
20 Zero. None.

21 So if you take the specific counts -- and the
22 Court said there has to be an overt act in
23 Massachusetts, all of it evaporates. Where's the help?
24 So when you distill the case and you dissipate the mist,
25 the noise, and you focus on what the concrete facts are

1 going to be, for Harris aiding wire fraud, he has to
2 know what it is that the user is going to be doing with
3 his product.

4 In the indictment the government talks about how
5 the products that Harris provided, quote, "enabled
6 computer users to obtain internet services without
7 making the required payment," that "his products enabled
8 users to obtain faster, upgraded or uncapped internet
9 service without paying the premiums," "enabled users to
10 disguise their true on-line identities." In each
11 instance what Harris did short of help -- because there
12 is no help, but short of help what he did is he provided
13 the possibility of something happening.

14 When he provides the capability, what's the
15 consequence of that? The Court instructed you this
16 morning that it is not enough to know that a product may
17 be used unlawfully, but the one thing you may consider
18 is knowledge how it would be used. How it would be
19 used. So if I sell to a person over there, do I know
20 how they will use it? Not how they could use it.

21 Back to the indictment. The government says it
22 enabled -- it enabled -- "enabled" means "makes
23 possible," makes possible something happening is not the
24 same as knowing it would be used for that purpose.

25 So dispelling the mist here of the help that

1 Harris supposedly provided, dispelling that mist and
2 looking to what happens here, if you listen to the
3 Court's instructions, knowledge of how it would be used,
4 how is the capability enabling computer users to do
5 upgraded service, free service, anonymity, how is the
6 enabling the predicate for a criminal conviction and how
7 in the world is it the predicate for wire fraud?

8 Harris is not charged with making a thing. He's
9 not charged with having a thing you're not supposed to
10 have. He's not charged with having the modem. He's not
11 charged with breaking into the modem. He's not charged
12 with pulling it to pieces and finding what makes it
13 work. That's not what he's charged with. He's charged
14 with this, by virtue of what this guy, over here, does
15 with it, Larosa, Madeira, Hanshaw. How in the world did
16 he give them help? And as you watch the evidence go in,
17 "could" or "would"? "Could" or "would"? It's not what
18 the product can do, it's whether you knew how he was
19 going to use it.

20 Now, here, you should know about Mr. Harris. He's
21 28 years old. He lives with his wife. He's a smart,
22 creative, innovative person. He has been intrigued --
23 and maybe that's not a strong enough word, but he's
24 fascinated by cable modems. For him -- he views a cable
25 modem differently than we do. I view a cable modem as

1 something that's sitting on my desk and kind of getting
2 in the way, because I don't really know how it works.
3 For him it's a sophisticated piece of equipment. It's a
4 mini computer. It has almost all the component parts of
5 a computer. For those of us who are electronically, or
6 not electronically inclined, it doesn't offer any hope,
7 any draw to find out what makes it work. But for
8 Mr. Harris there is.

9 Now, if you have cable internet service, you have
10 a cable modem. If you want to, you could rent one from
11 the cable company or you can go and buy one, and you can
12 buy one at Radio Shack, you could buy it at Best Buy,
13 anywhere you want to get your electronics from, you can
14 buy a cable modem. But the cable modems come with
15 instructions and the instructions are, "If it doesn't
16 work, turn it off, wait, and then turn it on again.
17 Otherwise call the cable provider." Because, you see,
18 the modem is a closed box and you're not supposed to
19 open it and you're not supposed to look inside. It's
20 controlled by cable companies. It has a protocol that
21 gives them full access to it. You can tinker with your
22 car, with your computer, you can take your electronics
23 apart in the refrigerator, but the cable company doesn't
24 want you to touch that cable modem and find out what is
25 inside or what it does.

1 But that modem in your house, on your desk, it can
2 limit your speed, it can control your gaming experience,
3 it can handicap your access to peer-to-peer exchanges.
4 It can slow your uploads to a crawl. If it senses that
5 you are accessing music or content-rich content and
6 you're uploading it, it can slow it down so it barely
7 moves. The suspicion might be, on the cable company's
8 part, that you're uploading copyrighted material, but
9 they don't know what your content is, but nonetheless
10 through your cable modem they can slow your use, they
11 can crimp it, um, and it can slow to a crawl.

12 "Uncapping," a term you're going to hear quite a
13 bit, "uncapping," is the process of increasing the
14 speed. So if your cable company allocates a certain
15 speed or it represents to you what that speed is going
16 to be, um, you learn -- and you will learn that when
17 cable companies talk about the speed, what they're
18 frequently talking about is your download speed, the
19 speed with which you access the newspaper or access some
20 kind of content. What they generally don't talk about
21 is your upload speed, your ability to push-out content
22 onto the net. If you push out content onto the net,
23 what you frequently find is that the cable company
24 throttles, tightens down, controls that, and sometimes
25 slows it to such a crawl that you can't get that content

1 out. So for uncappers, for people who are interested in
2 capping and uncapping, the game is not the download
3 speed, the game is the upload speed. It's the choke of
4 the cable companies on your ability to upload content
5 from your computer and push it out there to someone else
6 who would get it.

7 If you have large videos and you want to send them
8 to somebody, you're frequently going to find that speed
9 drops have arrived. You're going to find that cable
10 companies trim your service. There's a word out there,
11 it's called "throttling," they throttle your service,
12 and when they throttle your service, they're not giving
13 you what they say they're going to give you. "Oh, we
14 promise we'll give you, you know, this speed." What
15 they don't say is what happens with your upload speed if
16 you're trying to upload something to the net in which
17 you're going to find, during the course of the case, is
18 this throttling, this squeezing down of the pipe that
19 you're paying for, the throttling down of that pipe is
20 what the cable companies do in your computer, on your
21 desk, the closed box that you can't look into, and you
22 can't do anything about it. It's like learning that if
23 you go and get a pound of vegetables at a store, it's
24 like learning you're only getting three quarters of the
25 pound that you're paying for or like if you put 10

1 gallons of gas in your car and you find out you're not
2 getting 10 gallons. You don't get what you're supposed
3 to get.

4 The cable companies reduce your service for
5 another reason, during peak hours they overbook the node
6 that you're on. When you get your cable service, the
7 node that you're on is frequently overbooked. It's
8 similar to airplanes, when you arrive and it turns out
9 you can't get on your plane. They overbook it. Well,
10 cable companies do that as well and when they do that,
11 they cut down your speed, they throttle what you're
12 getting, and collapse that content.

13 So for Mr. Harris the puzzle is what's in this
14 modem? What's does it do? What it's like? What can I
15 find about the CPU on this? What can I do to take it
16 apart? In our interactive world there are lots of
17 applications, there are things that we use to increase
18 our experience, our electronic experience. There are
19 even aps for Apple products, ever since a 17-year old
20 found a way to reverse engineer an Iphone.

21 Any of you bring in an Ipod today?

22 (Jurors raise hands.)

23 THE COURT: Excuse me. Excuse me. The jurors
24 can't -- that's a rhetorical question. The jurors can't
25 communicate with the lawyers or anybody else.

1 Go ahead.

2 MR. MCGINTY: Now, that Ipod can be used to
3 upload copyrighted materials. Do you think Apple knows
4 that? Do you think it knows what its capability is? Do
5 you think Apple, when it made it, knew that it was a
6 potential copyright violation machine? Do you think it
7 matters that they knew that?

8 What about your DVD burner on your computer? That
9 has all the capability of downloading copyrighted
10 materials and violating the law. It has that
11 capability. Every computer manufacturer knows that.

12 What about your WIFI on your computer? Your WIFI
13 jumps to the nearest vulnerable network. It goes to
14 networks that don't want you on there, but it defaults
15 there. That's Dell. Does Dell know that its computer
16 piggybacks -- I'm sorry, trespasses, trespasses on other
17 systems? It certainly does.

18 The VCR? Software can be used, it can be abused.
19 It doesn't become illegal because it can be or it
20 enables or makes possible an abuse.

21 So Mr. Harris looked at a modem and he said, in
22 effect, "I want to find out what makes this tick. I
23 want to take it apart. I want to reverse engineer it.
24 I want to see what makes it work."

25 Now, his applications can be used to steal

1 service. That's a possibility. Does he know that?

2 Yes, he does know that. They can be used to upgrade
3 service? Does he know that? Yes, he knows that, the
4 same way that Apple knows that its Ipod can be used to
5 take copyrighted materials. He knows those things.

6 It can also be used to remove filters that are
7 imposed by the cable company that affect the content
8 that you receive on your computer. It can also be used
9 to open ports where content, if you want to download or
10 upload, particularly in peer-to-peer kinds of
11 communications, to open those ports would permit you
12 access to what the cable company tightened down. Now,
13 the cable company doesn't tell you it's going to do
14 that, it doesn't say, "By the way, you can't use certain
15 peer-to-peer opportunities," but the cable company
16 reaches into your modem and shuts it down, tightens it,
17 sometimes closes the port and completely prevents you
18 from getting access to that content.

19 Mr. Harris makes possible the exposure of the
20 innards and other choices because you now -- now that
21 it's open, you now have choices with respect to what you
22 do. Can your choices be bad? Sure. Of course. The
23 Ipod, yes, someone can use it for copyrighted material.
24 But if your choice is bad, it's not the basis for a
25 conviction of Mr. Harris. The potential of that threat

1 is not a criminal predicate. And when the government
2 talked about the help, it's because it realized just
3 that, there has to be something more than capability,
4 and Mr. Harris's capability is just that, not the
5 predicate for wire fraud.

6 Another thing. You're a dissident or you're an
7 employee that wants to be on a web exchange. If you
8 don't want your home country to know that you're a
9 dissident, you're Chinese, you're Kenyan, if you're
10 concerned about how your country is going to view your
11 expression about its politics, one of the things it does
12 is it provides anonymity. One of the promises of the
13 internet for many -- maybe not all of us, but for many,
14 was that on the net they would be anonymous. Oh, yes,
15 some people can abuse that. But people wanted the
16 privacy of the net, they wanted to communicate on the
17 net privately sometimes because they wanted to convey
18 some political content which can get them killed. A
19 worthy purpose?

20 So his product, among other things, makes it
21 possible for someone to go on the net, so you can't find
22 out who they are, so you can communicate, you can
23 communicate well, badly, for good or for bad. You have
24 that capability. But that's not wire fraud.

25 So all these capabilities are from the broken-open

1 modem, the potential that's there, and the government
2 wants to say the potential is singular and its
3 criminal. But one question for the government is, even
4 if that were the case, how does that make you having
5 knowledge of how someone would use that? But if the
6 potential is that you have choice affecting your content
7 and your delivery of services from a provider who is
8 promising you to make certain kinds of content
9 opportunities available to you, but doesn't do it, you
10 have the ability to affect that and you have the ability
11 to communicate past that in a way that makes you able to
12 communicate politically in a way, personally in a way,
13 that you have privacy rights.

14 So all of these things are made possible by
15 Mr. Harris's product.

16 Now, he's not here, as Apple might be, for his
17 copyright, he's here criminally. He's not here for the
18 redress of a violation. He's here in jeopardy of his
19 freedom.

20 The government says he hid who he was. (Picks up
21 the book.) No, he didn't. He did quite the opposite.
22 He elevated his profile up here. And his book is called
23 "Hacking the Cable Modem" and the subtitle, "What Cable
24 Companies don't want you to know." And in this book,
25 no, it doesn't tell you how to steal service, it

1 acknowledges that it could be used to steal service, but
2 it doesn't tell you to steal service. What it does is
3 tell you what's in that box on your desk that maybe you
4 don't care about, but maybe other people do, and want to
5 exercise their freedom to shape their experience through
6 that box in a host of different ways. And when he wrote
7 this, yes, he wrote it under his computer name,
8 "DerEngel," and on the back is his picture and his name,
9 "Ryan Harris," the author and his wife, the copyright,
10 "Ryan Harris."

11 This is not a guy creating some nasty internet
12 poison in some hidden away in a distant part of the
13 internet, this is a guy who put his chin up in the air.
14 And you know what he didn't expect? He didn't expect
15 them to take a poke at him, to take a poke at him
16 again.

17 So he's here facing the risk of his freedom,
18 having spoken out against powerful cable companies and
19 finding that they bite back, this case is him fighting
20 back, and the people that are coming in to take him down
21 are given immunity. Immunity. One is going to come in
22 a jail suit. Another one, his business partner, pled to
23 a charge. Oh, he did plead to a charge and do you know
24 what he pled to? Computer intrusion. Computer
25 intrusion. Aiding and betting computer intrusion,

1 including one of the people here, David Hanshaw, a
2 person that he was in communication with and exchanged
3 information on the net about. So he's charged with
4 computer intrusion. So a partner of Mr. Harris's, his
5 former partner, and one of them pleads to computer
6 intrusion and Harris is charged with wire fraud. What's
7 with that?

8 So what you have are accusers, one worse than
9 another, promised their freedom, so long as they
10 understood that the predicate today, tomorrow, and every
11 day, the answer to every question, today, tomorrow, and
12 every day, is going to be, "Him, Harris." In fact, when
13 the government met with Craig Phillips, the first
14 witness that's going to come in, when it met with him it
15 said, "Well, we're not really interested in you, we're
16 interested in Ryan Harris." Okay? So I'm not stupid.
17 I go. I get it. Um, what's the answer to Number 1?
18 Um, "Ryan Harris." The answer to Number 2, I think, is
19 "Ryan Harris" --

20 MR. BOOKBINDER: Objection, your Honor.

21 MR. MCGINTY: And Number 3 is "Ryan Harris."
22 This motley group is --

23 THE COURT: Excuse me. There's an objection.
24 I haven't ruled on it.

25 Well, two things. This is an opening statement,

1 not a closing argument, but this is within the range of
2 reason. But I'll take this occasion to tell the jurors
3 what I'm going to tell you at the end of the case.

4 The jury is obliged to decide the case based on
5 the evidence and determine, as I told you, whether the
6 defendant has been proven guilty beyond a reasonable
7 doubt, but you're to disregard what the possible penalty
8 might be and not be -- and not consider or be influenced
9 by that, that's a matter solely for the Court, if the
10 government proves the defendant guilty beyond a
11 reasonable doubt.

12 Go ahead.

13 MR. MCGINTY: What I would ask each of you to
14 do, um, because it's so important in terms of
15 maintaining orientation during trial, is that either
16 party, the government or I, can try to distract you from
17 the task at hand. It may be a good distraction. It may
18 be an effective distraction. Nonetheless. So hold on
19 to the thing the judge told you at the beginning, hold
20 on to that, and make that the pivot point, the way you
21 look at the evidence as it comes in.

22 It's not enough to know that a product might be
23 used unlawfully. It's not enough. Knowledge -- there
24 must be knowledge how a product would be used. Not
25 could, would.

1 I ask you to hold on to those two directions from
2 the Court in the consideration of the evidence. And I
3 will return at the end of the case and ask each of you,
4 in view of those instructions of the judge, to find Ryan
5 Harris not guilty. Thank you.

6 THE COURT: Is there anything before we
7 proceed to the first witness?

8 MR. BOOKBINDER: No, your Honor.

9 THE COURT: All right. Then after the
10 stenographer gets relocated and we move the podium, the
11 government may call the first witness. Or you may call
12 the first witness now actually.

13 (Pause.)

14 MR. BOOKBINDER: The United States calls Craig
15 Phillips.

16 (CRAIG PHILLIPS, sworn.)

17

18 *****

19 CRAIG PHILLIPS

20 *****

21

22 DIRECT EXAMINATION BY MR. BOOKBINDER:

23 Q. Good morning. Would you state your name and spell
24 your last name for the record?

25 A. Craig Phillips, P-H-I-L-L-I-P-S.

1 Q. Mr. Phillips, where do you live?

2 A. California, San Diego.

3 Q. And what do you do there for work?

4 A. I work at a grocery store.

5 Q. What do you do for the grocery store?

6 A. I'm a manager.

7 Q. How far did you go in school?

8 A. My third year of college.

9 Q. Do you know Ryan Harris?

10 A. Yes.

11 Q. Approximately when did you first meet Mr. Harris?

12 A. Around 2001.

13 Q. At the time that you met him in 2001 where were you
14 living?

15 A. Phoenix, Arizona.

16 Q. Where was he living?

17 A. Phoenix, Arizona.

18 Q. How is it that you first met Mr. Harris?

19 A. Through an acquaintance's acquaintance.

20 Q. All right. And what were the circumstances where
21 you met him through those acquaintances?

22 A. Um, through an on-line gaming called Counter
23 Strike. One of the acquaintances was Brian Deathridge,
24 who I went to school with, and then we met his friend,
25 who was Derek Rima, and then I met Ryan Harris through

1 him.

2 Q. Let me just ask you to -- if you could just spell a
3 couple of those things as the Court Reporter needs to
4 get them down.

5 The name of the video game you were playing was
6 what?

7 A. Counter Strike. An on-line game.

8 Q. All right. And the two people, the acquaintances,
9 one was Brian Deckridge, is that correct?

10 A. Brian Deathridge.

11 Q. And the other one is?

12 A. Derek Rima.

13 Q. And how do you spell Rima?

14 A. R-I-M-A.

15 Q. Thank you. So you were playing video games, on-line
16 video games, with a group of people, is that right?

17 A. Yes.

18 Q. And these are games that lots of people can play at
19 the same time?

20 A. That's correct.

21 Q. And how is it that you're playing the video games
22 with these acquaintances led you to meet Ryan Harris?

23 A. Um, eventually at one point I went over and, um --
24 when I met Brian Deathridge and then Derek Rima, I went
25 to Derek Rima's apartment, started talking about the

1 games, started playing the games on line.

2 Q. Where was Mr. Harris, was he there as well?

3 A. He was there also.

4 Q. And where was he living? Mr. Harris.

5 A. He was living with Derek Rima.

6 Q. And do you see Mr. Harris in the courtroom today?

7 A. Yes.

8 Q. Can you point him out and describe what he's
9 wearing?

10 A. Yes. He's wearing a gray coat and a colored tie.

11 MR. BOOKBINDER: Your Honor, may the record
12 reflect the witness has identified the defendant?

13 THE COURT: Yes.

14 Q. All right. So did you and Mr. Harris end up playing
15 this on-line game together?

16 A. Yes, on multiple occasions.

17 Q. And when you play these games, do you use a nickname
18 or an on-line name?

19 A. Me?

20 Q. Yes. Did you?

21 A. Yes. My on-line name was "yourmomma,"
22 Y-O-U-R-M-O-M-M-A.

23 Q. Did Mr. Harris have a name that he used as well?

24 A. Yes.

25 Q. What was it?

1 A. DerEngel, D-E-R-E-N-G-E-L.

2 Q. At the time you met Mr. Harris, back in 2001, what
3 were you doing?

4 A. Um, I was working at another grocery store full time
5 and going to school full time.

6 Q. And did you know whether Mr. Harris was working or
7 what he was doing?

8 A. At first I perceived him to be going to the
9 community college, but eventually I found out he was
10 not.

11 Q. At some point did you have a conversation with
12 Mr. Harris about cable modem hacking?

13 A. Yes.

14 Q. And do you remember when approximately you first
15 talked to him about this?

16 A. Um, late 2001, somewhere in 2002.

17 Q. And what if anything do you remember him saying
18 about that topic?

19 MR. MCGINTY: Objection.

20 THE COURT: The objection is overruled.

21 And if there's an objection, you should not answer
22 until I rule on the objection. If I say "sustained,"
23 that means you may not answer. If I say "overruled,"
24 that means you may answer.

25 I overruled the objection, therefore you may

1 answer the question.

2 A. At that time we had talked about a previous type of
3 cable modem that was, um, called a LAN City cable modem.

4 Q. And what did Mr. Harris tell you about these LAN
5 City cable modems?

6 A. At that time they were capable of getting greater
7 speeds than paid for by the subscriber -- by the company
8 who you purchased it from.

9 Q. So they're capable of getting faster speeds than
10 you're actually paying your cable company or your ISP
11 for?

12 A. That's correct.

13 Q. Had you heard about this -- and what was this
14 called? Did Mr. Harris tell you what this getting
15 greater speeds thing was called?

16 A. "Uncapping."

17 Q. Had you heard about "uncapping" or that concept
18 before Mr. Harris mentioned it to you?

19 A. No.

20 Q. Around this time did you see anybody use a hacked
21 cable modem?

22 A. Um, yes, I saw one at Derek Rima's apartment.

23 Q. And was that where Mr. Harris lived as well?

24 A. That's correct.

25 Q. At some point did -- was there a circumstance where

1 someone brought one of those modems to your apartment?

2 A. Yes, we were having a Counter Strike party and I had
3 about 20 computers and people over. I had a regular
4 cable modem there and I was paying for service there.
5 And then we had, um, issues getting all of the people on
6 the internet at the same time. So we connected all of
7 them together to the internet. We couldn't all get on
8 because we didn't have enough speed.

9 Q. Let me stop you right there. So -- just to be
10 clear, there were 20 people at your house with 20
11 different computers all wanting to play this game?

12 A. That's correct.

13 MR. MCGINTY: Objection, your Honor.

14 THE COURT: Leading, I think.

15 Overruled on that point. There may be some others
16 where leading is not appropriate, but that was okay.

17 MR. BOOKBINDER: Okay.

18 Q. Um, so I think you testified that everybody was
19 trying to connect to the internet. What was the
20 problem?

21 A. Um, we didn't have enough speed to connect to the
22 internet and play the game with all 20 computers.

23 Q. What happened then?

24 MR. MCGINTY: Objection, your Honor.

25 THE COURT: Overruled.

1 A. At that time Ryan Harris and Derrick Rima came over
2 with a specific model called the Motorola Surfboard
3 2100, and we connected it, and at that time everyone was
4 able to connect to the internet.

5 Q. So -- and what was it about this particular modem
6 that allowed everyone to get internet access through it?

7 A. Um, that cable modem was able to get up to 10 times
8 greater speed than the current cable modem that I was
9 paying for.

10 Q. And what if anything did Mr. Harris say to you about
11 why it was that this cable modem could get such
12 increased speed?

13 A. Because it was uncapped.

14 Q. Are you familiar with modems being modified so that
15 people can get internet without paying at all?

16 A. Yes.

17 Q. And is that a different kind of cable modem hacking
18 than what you've described?

19 A. It's similar.

20 Q. Okay. All right. So is that "uncapping" or what
21 would you call that?

22 A. Um, that would be obtaining free internet service.

23 Q. All right. Is that something you discussed with
24 Mr. Harris as well?

25 A. At a further date, yes.

1 Q. So later on, not in 2001 or 2002?

2 A. Yeah, maybe a little later on, 2002, 2003.

3 Q. And what if anything did Mr. Harris tell you about
4 how it was possible to get this free internet access?

5 MR. MCGINTY: Objection, your Honor.

6 THE COURT: The objection is overruled, under
7 Rule 801(d)(2)(A). Go ahead.

8 You may answer.

9 A. Can you restate the question?

10 Q. Absolutely.

11 What did Mr. Harris tell you about how it was
12 possible to modify a modem to get free internet service?

13 A. Um, if you changed the MAC address, you'd be able to
14 obtain free internet access.

15 Q. Can you very briefly describe what a MAC address is?

16 A. A MAC address is a unique number that's assigned to
17 each individual cable modem that the cable provider
18 identifies you on their network as a subscriber.

19 Q. So, um, and --

20 THE COURT: Actually, could we stop for just a
21 moment. I said I would give the jurors notebooks once
22 the evidence began and we haven't handed them out yet.
23 Sorry about that. And we'll probably have pens, too.

24 (Hands out notebooks.)

25 THE COURT: All right. Why don't you put the

1 question again, please.

2 MR. BOOKBINDER: I'll try to do that, your
3 Honor.

4 Q. We were talking about MAC addresses, and I believe
5 you said something about changing a MAC address. What
6 did Mr. Harris say was the purpose of changing the MAC
7 address on the modem?

8 A. It would allow you to obtain service for free.

9 Q. What would you have to change the MAC address to?

10 A. To a paying customer or a subscriber's MAC address.

11 Q. Did Mr. Harris explain to you how it was that
12 someone could get the MAC address of a legitimate
13 subscriber?

14 A. Um, you could --

15 MR. MCGINTY: Your Honor, I have the same
16 objection.

17 THE COURT: The objection is overruled.
18 Mr. Harris's statements are admissible under Rule
19 801(d)(2)(A) and to the extent he's asked, um,
20 Mr. Phillips's part of the conversations is admissible
21 conditionally or is admitted conditionally under Rule
22 801(d)(2)(E). Go ahead.

23 Q. So the question is --

24 MR. BOOKBINDER: Well, let me rephrase it,
25 your Honor, or ask it again.

1 Q. The question is, um, what did Mr. Harris tell you
2 about how someone could get the MAC address of a
3 legitimate cable subscriber?

4 A. Um, you could trade with other people or use a
5 program called a "sniffer," called CoaxThief.

6 Q. So you mentioned the term "sniffer." What is a
7 "sniffer"?

8 A. What it does is it allows you to read everyone's MAC
9 address in your local area and obtain those addresses
10 and then trade them with other people on the internet
11 from the same provider.

12 Q. The name of the sniffer program that you mentioned
13 is what?

14 A. CoaxThief.

15 Q. Is it C-O-A-X?

16 A. T-H-I-E-F.

17 Q. Were you familiar with this concept of changing a
18 MAC address to get free service before Mr. Harris told
19 you about it?

20 A. No, sir.

21 Q. Okay. You describe, um, that Mr. Harris explained
22 to you about changing a MAC address to a legitimate
23 subscriber and what happens once you do that?

24 A. Um, you obtain free internet service from that
25 provider, not paying for it.

1 Q. Did you have any discussions with Mr. Harris around
2 that time about his -- in which he expressed his views
3 of cable companies or internet service providers?

4 A. Um, he felt that the internet should be free and
5 that no one should have to pay for it.

6 Q. So in early 2003 -- um, well, initially you were
7 living in Phoenix, is that correct?

8 A. That's correct.

9 Q. And that's where you met Mr. Harris?

10 A. That's correct.

11 Q. At some point did you move?

12 A. Yes. I got in a car accident and was unable to
13 reach my financial obligations so I moved back home with
14 my parents in San Diego.

15 Q. After you moved back to San Diego did Ryan Harris
16 stay in Phoenix for a period of time?

17 A. To my knowledge, yes.

18 Q. And did you keep in touch with him?

19 A. On occasion we spoke on the phone, but mostly
20 on-line through a program called "MSN Messenger."

21 Q. What is MSN Messenger?

22 A. It's a chat program that allows you to communicate
23 from one computer to another over the internet.

24 Q. When you have these chat communications between two
25 computers does the program save some kind of a record or

1 a log of that chat?

2 A. Yes, the program does save a log or record of what
3 you communicated to that person that you typed on your
4 computer, like a text log.

5 Q. At some point did you learn about a website called
6 "TCNISO.net"?

7 A. Yes.

8 Q. About when was it that you first heard about that,
9 if you remember?

10 A. Um, around 2002, early 2003.

11 Q. When you -- how is it you first heard about that
12 website?

13 A. I heard about that website through Ryan Harris.

14 Q. Did you visit the website once he mentioned it to
15 you?

16 A. Yes.

17 Q. And what was on that?

18 A. Um, there were tutorials of how to uncap your
19 modem. There was a program called Sigma 1.3. And there
20 were diagrams on how to make a specific product called a
21 "serial cable."

22 Q. Okay, let me ask you about some of what you just
23 mentioned. You said there was a program on there called
24 Sigma 1.3, is that correct?

25 A. That's correct.

1 Q. And I'll ask you about that in a second. You said
2 also there were diagrams about how to make a -- what
3 kind of cable?

4 A. A serial cable.

5 Q. What's a serial cable?

6 A. It's a cable that allows your computer to
7 communicate to your cable modem and make modifications.

8 Q. Who was it who was running the website at the point
9 that you learned about it?

10 A. Um, Ryan Harris, to my knowledge.

11 Q. So, um, in addition to seeing the program, Sigma
12 1.3, on the website, did you talk to Mr. Harris about it
13 at all?

14 A. Yes.

15 Q. What, um -- what did he tell you that program did?

16 A. That program was capable of uncapping a modem and
17 eventually it could be capable of getting free internet
18 service.

19 Q. Was there anything in addition to the program itself
20 that Mr. Harris told you people needed in order to get
21 free internet service?

22 A. Um, there was also -- can you repeat the question?

23 Q. Sure, yeah. Yeah. Let me try that.

24 So if anyone wanted to use that program to get
25 free internet service, did they need anything, any kind

1 of hardware, equipment, cabling, to do that?

2 A. To my knowledge you needed the serial cable which
3 enabled you to access the cable modem's memory, and at
4 that point you were able to adjust the MAC address.

5 Q. Did you ever use that program, Sigma 1.3?

6 A. Yes.

7 Q. When you used it, how did you physically get a copy
8 of the program?

9 A. I took it off the website in which Ryan Harris told
10 me where it was.

11 Q. So you downloaded it?

12 A. That's correct.

13 Q. What did you download it onto?

14 A. Onto my computer and then onto my cable modem.

15 Q. When you say your cable modem, where were you living
16 at this point?

17 A. In San Diego, California.

18 Q. With whom?

19 A. With my parents.

20 Q. Was there internet service at your parents' house?

21 A. Yes, my parents had internet service and they paid
22 for it and I also had a subcable modem that I downloaded
23 the Sigma 1.3 onto.

24 Q. So the modem that you were downloading onto was not
25 the one that your parents were paying for through their

1 cable company?

2 A. That's correct.

3 Q. You got a second line and that's where you
4 downloaded the program?

5 A. That's correct.

6 Q. All right. What did you use it for?

7 A. I used it for an FTP to upload and download movies.

8 Q. Let me ask you to break that up a little bit.

9 First of all, did you use that modem, that you
10 loaded Sigma 1.3 onto, to connect to the internet?

11 A. That's correct, I connected to the internet using a
12 stolen MAC address and a -- um, a separate config file
13 which allowed me to have higher speeds for free.

14 Q. So, um, you said that you used a stolen MAC
15 address. Where did you get the MAC address?

16 A. Um, from trading on forums on the website.

17 Q. Forums on what website?

18 A. TCNISO.net.

19 Q. When you say "trading," what do you mean by that?

20 A. I traded the MAC addresses from where I lived to
21 where -- with someone else that I had MAC addresses from
22 the same company.

23 Q. So how did you get MAC addresses from where you
24 lived?

25 A. I used CoaxThief.

1 Q. That's the sniffer program that TCN --

2 A. That's correct.

3 Q. -- that TCNISO provided?

4 A. That's correct.

5 Q. So you got these MAC addresses from your
6 neighborhood with that program?

7 A. Uh-huh.

8 Q. Why couldn't you just use those to get yourself
9 internet access?

10 A. Um, if you had, um, a MAC address from your local
11 area, you could not connect to the internet at the same
12 time as that MAC address, you needed one from a separate
13 area.

14 Q. You said you can't connect at the same time as that
15 MAC address. What do you mean by that?

16 A. What I mean is if my neighbor had -- if I took in
17 their MAC address and I turned on mine in the same area,
18 it would not work at the same time. So I needed one
19 from a separate location or a separate network.

20 Q. So if you got a MAC address from a different
21 geographical area, a different part of town, a different
22 part of the state, then that would work?

23 A. That's correct.

24 Q. And is that why you traded MAC addresses with
25 somebody on the forums?

1 A. That's correct.

2 Q. Now, you said, um -- I think you said that you --
3 when you got on with this modem you got faster internet
4 service than you were paying for, is that right?

5 A. Up to 10 times the speed.

6 Q. And what was the advantage of having that faster
7 service?

8 A. Um, I could download movies or music faster or trade
9 them with other people.

10 Q. At this point, Mr. Phillips, I would like you to
11 take a look at some of the folders in front of you that
12 have what has been marked for identification as a series
13 of exhibits and the ones I want you to take a look
14 at are, um, what's been -- what are labeled there as
15 Exhibits 5, 6, 10 and 17 through 21. Can you just
16 quickly look at those and see if you recognize what they
17 are.

18 A. (Looks.)

19 THE COURT: I'm sorry. What are the numbers
20 again?

21 MR. BOOKBINDER: 5, 6, 10 and 17 through 21.

22 (Pause.)

23 THE COURT: Well, they'll be collectively
24 marked Exhibits D1, 2, 3, 4, 5, 6, 7 and 8, for
25 identification only.

1 (Exhibits D1 through D8, marked.)

2 A. Yes.

3 Q. Have you had a chance to look at those?

4 A. Yes, I've seen them before.

5 Q. Do you recognize them?

6 A. Yes.

7 Q. What are they?

8 A. They are chat logs from MSN Messenger.

9 Q. So -- and it's fair to say they're excerpts, just
10 portions of chat logs?

11 A. That's correct.

12 Q. And how is it that you're familiar with these
13 particular chat logs?

14 A. At the time when I left the company I had taken them
15 from the network that we were on, the computer network
16 that we were on.

17 Q. So you say when you "left the company," that this is
18 something that happened after 2003 that we haven't
19 talked about yet, is that right?

20 A. That's correct.

21 Q. And you said you took them from the network. How --
22 so you copied these?

23 A. That's correct. All of our computers in the house,
24 there was one in my room, one in Ryan's room, and one in
25 the living room. Um, we were all interconnected so we

1 were able to see the files and information on all three
2 computers. At that time what I did was I took all the
3 information that I could off of all three computers and
4 saved them to a hard drive and saved them to computer
5 CDR disks.

6 Q. And I'll ask you more about the house and that
7 situation later.

8 But for now, um, you said you copied them onto CDs
9 and a hard drive. Approximately when was that?

10 A. Early 2006.

11 Q. What did you do with them after you copied them?

12 A. Um, I took them with me when I left -- or moved out.

13 Q. And did you hold onto them?

14 A. I stored them at my parents' house and everywhere I
15 moved thereafter.

16 Q. At some point did you give them to law enforcement?

17 A. Yes, I gave it to the FBI in 2010.

18 Q. At any point did you alter or change the logs in any
19 way?

20 A. No.

21 MR. BOOKBINDER: At this point, your Honor,
22 the government offers just Exhibit 5.

23 THE COURT: Well --

24 MR. BOOKBINDER: Actually, your Honor, I'll
25 ask another question, if I could.

1 Q. Would you take a look at Exhibit 5 and just identify
2 who the parties are that are chatting in that log?

3 A. Me and Ryan Harris.

4 (Pause.)

5 MR. BOOKBINDER: And now the government does
6 offer Exhibit 5.

7 MR. MCGINTY: And I object, your Honor.

8 THE COURT: Actually we need essentially a
9 protocol for dealing with this. I'll see counsel at
10 sidebar.

11

12 AT THE SIDEBAR

13 THE COURT: All right. Um, let me just --
14 All right. Exhibit 5 is what?

15 MR. BOOKBINDER: It's the chat between
16 Mr. Phillips and Mr. Harris and the version we're
17 offering, it's not that version, it's the one that I
18 provided yesterday, the redacted version.

19 THE COURT: Well, somebody's got to update
20 me.

21 Okay. Hold on just a second.

22 (Looks.)

23 THE COURT: This is --

24 MR. BOOKBINDER: That's it, your Honor.

25 THE COURT: And this is one of the -- one of

1 the chats that I ruled on in limine, isn't that right?

2 MR. BOOKBINDER: Yes.

3 THE COURT: And is there some -- just a
4 minute. I'm looking at Document Number 94, Page 7.
5 These are --

6 MR. BOOKBINDER: Your Honor --

7 THE COURT: These are -- these are the
8 Phillips statements that I said I would conditionally
9 admit under Rule 801(d)(2)(E) and Harris's statements,
10 his own, under (d)(2)(A), correct?

11 MR. BOOKBINDER: Correct.

12 MR. MCGINTY: There was an issue about
13 authenticity and I would ask for the opportunity to voir
14 dire him now.

15 THE COURT: No, I'm going to admit them and if
16 I'm satisfied that -- if somebody had flagged this for
17 me before, before voir dire and before the jury was in
18 the box, then I wouldn't have put them in there.

19 MR. MCGINTY: Well, I'd prefer to do it in
20 open court.

21 THE COURT: Yeah, then you'll do it on cross-
22 examination.

23 I'm admitting them and if I have to tell the jury
24 to disregard them, then I will. But basically what he
25 said, his testimony so far, um, is -- and you can tell

1 me, you know, if you might want to challenge it or make
2 a proffer on it, and I'll listen to it and revise it,
3 but that he copied them from the computers that he
4 shared with Mr. Harris and that he took them to his
5 parents' house and everywhere else he moved after that
6 and he didn't alter them before he turned them over to
7 law enforcement, at least that's what's been represented
8 to me, and that the government would be able to link up
9 the chain of custody.

10 And I assume that some law enforcement officer
11 will say that these are in the state in which they were
12 received from Mr. Phillips?

13 MR. BOOKBINDER: Correct.

14 THE COURT: So with that understanding, I'll
15 admit it, and if the foundation is sufficiently eroded,
16 then I'll tell the jury to take it out of evidence, I'm
17 sure, and I will tell the jury to disregard it. Okay?

18 MR. BOOKBINDER: Thank you, your Honor.

19

20 (In open court.)

21 THE COURT: The objection is overruled.

22 Exhibit 5 is admitted, but Mr. Phillips' statements in
23 Exhibit 5 are only conditionally admitted. But this --

24 MR. BOOKBINDER: Your Honor, at this point I'd
25 like to show a portion of the exhibit now to the witness

1 and to the jury on the electronics system.

2 THE COURT: Okay. Ladies and gentlemen --
3 let's see. Do you have your monitors out, including in
4 the back? Yes. And that should turn on the jurors'
5 monitors as well as the rest of ours.

6 MR. BOOKBINDER: Now that's very small. Let
7 me blow it up.

8 (Blows up.)

9 MR. BOOKBINDER: Your Honor, if the Court
10 would inquire if the jurors could read this now. I can
11 blow it up further, if necessary.

12 THE COURT: Okay. If anybody's having trouble
13 reading that, please raise your hand.

14 THE JUROR: I mean, it's kind of cut off.

15 THE COURT: Just raise your hand. Don't
16 speak. It's hard. It's hard.

17 If I ask you a question, you can speak, but now
18 just raise your hand.

19 (Juror raises hand.)

20 THE COURT: Can you blow it up?

21 MR. BOOKBINDER: The more I blow it up, the
22 more it cuts it off. So I will endeavor to show the
23 rest of the document. I think the concern was that the
24 right-hand portion is cut off and that's true. I'll
25 need to scroll over so that it doesn't get too small.

1 THE COURT: If at any point somebody's having
2 difficulty seeing or hearing, just please signal. Okay?

3 Q. All right. Now, Mr. Phillips, I want to ask you a
4 little bit about this.

5 Is this one portion of a chat log that you
6 described earlier?

7 A. Yes.

8 Q. All right. And you said, I believe, that this was
9 between you and -- and what name do you -- are you using
10 here on the screen?

11 A. I'm using the name "YourMomma."

12 Q. Okay. And who are you talking with?

13 A. "DerEngel," Brian Harris.

14 Q. So, um -- well, let me ask you about the different
15 columns on this chat log.

16 The left-hand column, that's the date of the
17 conversation?

18 A. That's correct.

19 Q. Well, in this case what's the date?

20 A. 1-3-2005.

21 Q. And then the next one is the time, right?

22 A. That's correct.

23 Q. And the one to the left, is that the person speaking
24 or the person listening?

25 A. The person speaking.

1 Q. So the first line up there is "YourMomma" and that
2 was you speaking?

3 A. That's correct.

4 Q. And the next line is the person listening? The next
5 column. I'm sorry.

6 A. That's correct.

7 Q. So you're speaking to -- and I'll scroll over now.
8 You're speaking to DerEngel? And what I would like you
9 to do here is, um, if you could -- is can you read the
10 portions that are you speaking and I'll read the
11 DerEngel response.

12 A. "I'm using a stolen MAC and serial for this FTP."

13 Q. Let me stop you right there. Um, a "stolen MAC" is
14 the MAC address that we were discussing earlier?

15 A. Yes, that's correct.

16 Q. And "serial" is the cable?

17 A. Um, the "serial" actually is another unique
18 identification number for the cable modem.

19 Q. And then you say "for this FTP." What is an FTP?

20 A. It's called a "File Transfer Protocol." It's a
21 program that allows you to transfer information from one
22 computer to another.

23 Q. Okay. Then DerEngel says, "110K, it seems right
24 now." What do you understand "110K" to mean?

25 A. That means how much my cable modem is uploading to

1 him. So that means how fast he is downloading from my
2 FTP.

3 Q. Go ahead. Read the last line.

4 A. "And I have my regular house modem running
5 completely for my mom and my other computer."

6 Q. When you say "regular house modem," what did you
7 mean by that?

8 A. Um, I meant that the one that my parents paid for
9 and then I had a second one that was not paid for.

10 Q. So the "regular house modem running for my mom and
11 my other computer," who was using the regular paid
12 modem?

13 A. Um, my parents and I.

14 Q. So you testified earlier that you had one of these
15 uncapped modems running at your parents' house. Is this
16 a chat about that?

17 A. That's correct, this is a chat about me using a
18 stolen MAC address and serial number, obtaining free
19 service and higher speeds from the provider, illegally.

20 Q. Let's take, um -- I'd like to show you now, on the
21 screen, Page 5 of this exhibit, and again I'm going to
22 blow it up because obviously it's very hard to read
23 otherwise. (Blows up exhibit.) Again, can you read the
24 portions of this that are you and I will read the
25 portions that are DerEngel.

1 A. "I'm not on an uncapped modem. Give me thirty
2 seconds."

3 Q. "Okay."

4 A. "I will change modems." "Okay." "Okay, are you
5 ready now?"

6 Q. What's going -- and then the next line, what's the
7 next line there?

8 A. Um, the one in gray or --

9 Q. Yes, the one in gray.

10 A. I'm sending a file to him.

11 Q. Um, keep going.

12 A. "Speed for you?" "Accept." "I'm uncapped."

13 Q. And then there's another -- are you sending another
14 file?

15 A. I'm sending the exact same file, but he didn't
16 accept it yet.

17 Q. All right. Go ahead.

18 A. "There."

19 Q. "Okay."

20 A. "Much nicer speeds."

21 Q. All right. So in this chat are you describing
22 changing from the, um -- the modem, the paid-for modem
23 at your parents' house to the uncapped one with the
24 faster speeds?

25 A. That's correct, I'm changing from the one that I'm

1 paying for to the one that has the illegal MAC address
2 and not paying for internet service.

3 Q. Now, I'll show you the next page of that exhibit,
4 which is Exhibit 5, Page 6, and what I want to ask you
5 about here is the, um, bottom portion.

6 (Pause.)

7 THE COURT: Okay. I think we're having maybe
8 some difficulty with one of the jurors reading this.

9 MR. BOOKBINDER: Oh, I could try to make it
10 bigger.

11 THE COURT: Yes.

12 MR. BOOKBINDER: (Blows up document.)

13 THE COURT: Is the screen not working?

14 THE JUROR: It's working.

15 THE COURT: Okay, Dan, why don't you --

16 (Clerk goes to help juror.)

17 THE COURT: Are you able to read it now? Oh,
18 okay.

19 You'll see whatever he puts up there, but you
20 won't see the rest. I'm afraid that's how it works
21 here.

22 Q. Let me ask you, this portion of Page 6, of Exhibit
23 5, focusing on the bottom portion that's on the screen
24 now.

25 What's the date of this chat?

1 A. January 24th, 2005.

2 Q. It begins around 8:00 p.m.?

3 A. That's correct.

4 Q. Now, um, again I want to read a portion of this and
5 have you read the part that's you. So beginning

6 "DerEngel."

7 "What's the name of the CFG file that you are
8 using for your uncapped modem?" Well, let me stop.

9 What's the CFG file?

10 A. A config file. A config file is a file that the
11 cable companies identify how fast your cable service is.

12 Q. The configuration file essentially determines the
13 speed of the service on the modem?

14 A. That's correct.

15 Q. If you want to get uncapped faster service, do you
16 need a different configuration file for that?

17 A. That's correct.

18 Q. All right. So now going back. What's the name of
19 the CFG file that you were using for your uncapped
20 modem?

21 A. "ISRR."

22 Q. Actually, can you just read the next line.

23 A. Oh. "Why?"

24 Q. "No, why, just tell me."

25 A. "Okay. Hold on. Let me find it."

1 Q. Let me stop you there and I want to just skip to the
2 bottom of this page. (Skips.) There's a series of
3 texts there. Is that files or is that -- well, what
4 does that mean, there's a series of text numbers and
5 letters?

6 A. That's information about the speed of the cable
7 modem.

8 Q. And if you could start reading from the third line
9 from the bottom. What does that say?

10 A. "I will d-load it from TFTP."

11 Q. And what does that mean, "d-load it"?

12 A. Um, download it from the TFTP. That's another form
13 of File Transfer Protocol from the modem.

14 Q. Okay, go ahead. You can read that again.

15 A. "If you want me to."

16 Q. And DerEngel says "Please."

17 So what did you understand him to be asking you
18 there?

19 A. To take the config file off my modem.

20 Q. And do what with it?

21 A. Give it to him.

22 Q. Did you do that?

23 A. Yes.

24 Q. And this was the configuration file that you were
25 using to get uncapped service?

1 A. Yes.

2 Q. When you first went to the -- you testified earlier
3 that when you first went to the TCNISO website, there
4 was a program on there called Sigma 1.3, is that right?

5 A. That's correct.

6 Q. Was that something that people had to pay for?

7 A. At that time it was free.

8 Q. Did you ever talk to Harris about whether he planned
9 to charge for his products?

10 A. Um, eventually, yes.

11 Q. And do you remember when that was that you talked to
12 him about that?

13 A. Around 2003, 2004.

14 Q. What did he tell you about whether he had plans to
15 start charging for the products?

16 A. At first it was for the serial cable that allows you
17 to connect your computer to the memory of the cable
18 modem.

19 Q. That was the first product he charged for?

20 A. That's correct. To my knowledge.

21 Q. Did he tell you what other products he planned to or
22 was charging for?

23 A. Um, eventually he was going to charge for Sigma and
24 then down the road, um, Black Cat, and then the newer
25 versions of Sigma.

1 Q. Okay. What's "Black Cat"?

2 A. "Black Cat" is a cable that allows you to directly
3 connect to the memory and change the memory completely.

4 Q. The memory of what?

5 A. Of the cable modem.

6 Q. All right. So he was going to start charging for
7 that kind of cable and for the Sigma software itself?

8 A. That's correct.

9 Q. Um, do you know whether TCNISO became incorporated
10 at some point as a corporation?

11 A. Yes.

12 Q. How do you know that?

13 A. I filled out the paperwork.

14 Q. Okay. And did someone ask you to do the
15 incorporation work for the company?

16 A. Yes, Ryan Harris.

17 Q. Can you take a look at what's been marked as Exhibit
18 1. It should be in front of you.

19 A. (Looks.)

20 Q. Do you recognize that document?

21 A. Yes.

22 Q. What is it?

23 A. It's an incorporation of California.

24 Q. Of what?

25 A. Of TCNISO, Incorporated.

1 Q. Whose signature is on that?

2 A. Mine.

3 MR. BOOKBINDER: Your Honor, the government
4 offers Exhibit 1.

5 THE COURT: As I understand it, there's no
6 objection, and it is admitted.

7 (Exhibit 1, marked.)

8 MR. BOOKBINDER: And I'll put that up on the
9 screen, Mr. Phillips, and I'll see if I can blow up
10 portions of it.

11 (On screen.)

12 Q. All right. So at the top of it the corporate name
13 is what?

14 A. "TCNISO, Incorporated."

15 Q. And what's the date of incorporation?

16 A. May 15th, 2005.

17 Q. And scrolling down. Who is listed as the principal
18 executive officer?

19 A. Ryan Harris.

20 Q. Um, and what are you listed as for the -- and down
21 below Line 4, he's listed as the Chief Executive
22 Officer, or CEO, as well, is that right?

23 A. Yes.

24 Q. And you're listed as what?

25 A. The Secretary.

1 Q. Okay. And, um -- so at this point you were living
2 in California, is that correct?

3 A. That's correct.

4 Q. When you incorporated the company. Where was
5 Mr. Harris living?

6 A. Oregon, to my knowledge.

7 Q. Did you talk to him about what state you should
8 incorporate the company in?

9 A. Yes.

10 Q. What did he tell you about that?

11 A. He told me that California would be a good state
12 because it would protect our assets from someone suing
13 our company.

14 Q. Did he tell you what he was worried about?

15 A. Um, possibly down the line maybe the cable companies
16 suing us or from possibly losing our assets one way or
17 the other.

18 THE COURT: I'm sorry. You've got to keep
19 your voice up. I couldn't hear the end of it.

20 A. Could you repeat the question, sir?

21 Q. Yes. I asked you what Mr. Harris told you he was
22 worried about.

23 A. Um, he was worried about the cable companies suing
24 us, losing our assets, or for some other reason
25 unforeseen, us losing our assets, personally.

1 Q. So you incorporated in California. What address did
2 you use as the, um, principal business address in
3 California?

4 A. My parents' address.

5 Q. Is that the 11410 Mark Abba Drive, is that correct?

6 A. That's correct.

7 Q. Why did you use your parents' address?

8 A. It wasn't a great decision, but our P.O. Box is --
9 you can't incorporate to a P.O. Box.

10 Q. So TCNISO had a Post Office box in California?

11 A. Yes, that's correct. We had to have a physical
12 address to incorporate.

13 Q. All right. Let me now direct you back to Exhibit 5,
14 if you could. And I'll put the page on the screen. And
15 the page I want to ask you about is Page 9. (On
16 screen.) Again, I'll pull up a portion of it and you
17 can read it.

18 First of all, what is the -- what's the date of
19 this particular portion of the chat log?

20 A. 1-27-2005.

21 Q. And I'm now scrolling over. I'll read the portion
22 that's DerEngel and you can read the portion that's
23 you.

24 DerEngel: "Now that we have a phone and an
25 address, what do we need now? We need to incorporate."

1 A. "I know."

2 Q. "Okay, that's your next task. Incorporate in
3 California. Use the P.O. Box as our corporate
4 address."

5 A. "Make it real, 100 percent legit."

6 Q. "And the phone number, et cetera. Incorporating
7 buys us free insurance, i.e., we can't be touched."

8 So in that chat log, he's -- Harris is suggesting
9 using a Post Office box as your corporate address. Did
10 you try to do that or investigate that?

11 A. Um, I did investigate and found out that you cannot
12 incorporate to a P.O. Box, to my knowledge.

13 Q. And that's why you used your parents' address?

14 A. That's correct.

15 Q. And this, um -- um, let me now go, if we could, to
16 the bottom of that page. And again this is -- this is
17 the same date, January 27th?

18 A. That is correct. It was at the same time.

19 Q. At 12:28 a.m.?

20 A. Yes.

21 Q. So that's -- just to be clear, 12:28 a.m., that's
22 after midnight?

23 A. That's correct.

24 Q. Did you guys chat often in the middle of the night?

25 A. Yes.

1 Q. I'll read this, since it's the DerEngel portion.

2 "Here is how the split will happen. 51 percent
3 me, 5 percent you, 5 percent Lex, 5 percent Isa, and we
4 will leave 34 percent to be purchased publicly."

5 What did you understand this to be a discussion
6 about, what is he talking about here?

7 A. About how the company is split apart, who is going
8 to own what portion of the company.

9 Q. So this is essentially what the stock split up is
10 going to be?

11 A. That's correct.

12 Q. And I'll ask you, and we'll talk more about them
13 later, but it says "5 percent Lex," or "Lex." Who is
14 that?

15 A. Chris Watts.

16 Q. Chris Watts. And did he go by the on-line name of
17 "Lex" or "Lex," and that's L-E-X?

18 A. That's correct.

19 Q. "And 5 percent Isa," who is that?

20 A. Isabella Lindquist.

21 Q. Let me show you now Page 15 of this exhibit.

22 (Shows.) Again, let me blow up a portion of it. (Blows
23 up.)

24 What's the date of this chat log?

25 A. February 25th of 2005.

1 Q. All right. Let me see if you can tell who is saying
2 what. And can you read the portion that is -- and I'd
3 like you to read the portion that is not highlighted.

4 Is that the portion that was you?

5 A. That's correct.

6 Q. Okay. It's hard to blow it up so that it's big
7 enough so you can see everything on the screen.

8 And so you read the portion that was you here.

9 A. "Guess what came today from FedEx? TCNISO's
10 official incorporation papers."

11 Q. "Okay."

12 A. "TCNISO, Inc. is now, 100 percent, a legal
13 corporation."

14 Q. "Are you sure?"

15 A. "Yup. Just need EIN."

16 Q. "What's EIN?"

17 A. "EIN equals Tax-Id. We get on Monday."

18 Q. All right. "EIN?"

19 A. "Employer ID Number for taxes equals EIN. Monday we
20 can get merchant."

21 Q. What's "merchant," what do you understand that to
22 be?

23 A. A merchant is a credit card processor for on-line
24 payment.

25 Q. So this is after you had received the incorporation

1 documents, correct?

2 A. That's correct.

3 Q. All right. So let me turn to -- a quick look at the
4 next page of this exhibit, that's Page 16.

5 Again, we're still on February 25th here?

6 A. That's correct.

7 Q. All right. (Turns.) And I'll read again the
8 DerEngel part of this and you can read the portion
9 that's you again.

10 Is it the DerEngel part that's in yellow and your
11 response is not highlighted, correct?

12 A. That's correct.

13 Q. All right. Um, I'm sorry. You know what? I'm just
14 going to focus actually on this. (Focuses.)

15 Can you read the, um, second-to-last line?

16 A. "Well, like I said, we are, 100 percent, a legal
17 company."

18 Q. "And then we will start on our path to becoming
19 millionaires."

20 Um, at some point did Ryan Harris move away from
21 Phoenix?

22 A. Yes, he moved to Portland.

23 Q. In Oregon?

24 A. That's correct.

25 Q. All right. And did he move again after that to

1 California?

2 A. Yes, he moved to San Diego.

3 Q. When he moved to San Diego, you were already living
4 there, correct?

5 A. That's correct.

6 Q. Where did Ryan Harris live?

7 A. He stayed at my parents' house.

8 Q. How long did he live with you at your parents'
9 house?

10 MR. MCGINTY: Your Honor, can we have dates
11 for this, please?

12 THE COURT: Can you try to get the approximate
13 dates.

14 Q. Approximately when, if you can remember, did
15 Mr. Harris move in with you and your parents?

16 A. Um, in 2005, early.

17 Q. How long did he live there?

18 A. Three months.

19 Q. Um, at some point, um, when you -- did you move out
20 of your parents house after that?

21 A. That's correct, we moved a couple of blocks away
22 into an apartment.

23 Q. And when you say "we," who is we?

24 A. Me and Ryan Harris.

25 Q. And how long approximately, and if you can remember,

1 did you live with him in that apartment?

2 A. Um, six months to a year.

3 Q. So these were what years are we talking about now?

4 A. 2005/2006.

5 Q. Did you guys have computers in the apartment?

6 A. Yes, we had three.

7 Q. And where were the three computers?

8 A. One in my room, one in his room, and one in the
9 living room.

10 Q. Did you have cable modems in the apartment?

11 A. Yes.

12 Q. How many?

13 A. Um, we had one that I legitimately was paying for
14 and then we had one that was using a stolen MAC address
15 and uncapped, and then we had multiple for the business,
16 to sell.

17 Q. But there were two that were working, is that right?

18 A. That's correct, in use.

19 Q. Okay. The one that you said that was hacked, um,
20 what did you get from that hacked modem? You were
21 paying for service from that modem?

22 A. No, we were not paying for service.

23 Q. And what were the speeds like on that modem?

24 A. Up to 10 times faster than the paid service.

25 Q. Who modified that modem so that it could get free

1 service?

2 A. I did.

3 Q. All right. Was -- when you modified that modem, was
4 Mr. Harris there?

5 A. Yes.

6 Q. Did you guys talk about the fact that, um --
7 actually, let me step back.

8 What was that modem modified with, what software
9 program?

10 A. Sigma 1.6.

11 Q. Do you remember which versions -- you remember it
12 being the 1.6 version?

13 A. I'm pretty sure it was 1.6.

14 Q. Okay. That was just a later version of that program
15 after 1.3, is that correct?

16 A. That's correct.

17 Q. And did you ever have a conversation with Mr. Harris
18 about -- do you remember talking about the fact that you
19 had a paid modem and an uncapped modem in the same
20 apartment?

21 A. That's correct.

22 Q. What do you remember him saying?

23 A. Um, "Why should we pay for one? We don't need to."
24 And I explained back that, "Well, we do, because if we
25 don't pay for the service, they'll come out and unhook

1 the service to the house."

2 Q. So when you say "unhook the service to the house,"
3 what do you mean by that?

4 A. The cable company will physically come out and
5 unplug the cable so that you can't get any form of
6 service from it.

7 Q. So if they physically take the cable off of your
8 house, it doesn't matter what kind of modem you have,
9 you can't get service, is that right?

10 A. That's correct.

11 Q. Um, okay. And so is that why you paid for one modem
12 and then had the other uncapped, the hacked one?

13 A. Yes.

14 Q. Now, um, during the time you were living with
15 Mr. Harris, were you working for the company TCNISO,
16 were you doing some work for the company as well?

17 A. Yes.

18 Q. What was, um -- what were your roles, what did you
19 do?

20 A. I would do shipping. I would make the products, the
21 Black Cat cables, the serial cables. I'd preflash the
22 modems --

23 Q. Let me first slow you down so that the Court
24 Reporter can get this down and also so I can ask you
25 about some of the things you're talking about.

1 A. Okay.

2 Q. So you said you would make the cables?

3 A. That's correct.

4 Q. All right. And then I think you said you would
5 "flash" the modems?

6 A. That's correct, I would alter the memory of the
7 modems.

8 Q. And when you say "alter," using what software?

9 A. I would load Sigma 1.6 onto them.

10 Q. And what were these -- these aren't your personal
11 modems that you were using, right?

12 A. That's correct.

13 Q. These were modems that you were selling -- that
14 TCNISO was selling to people?

15 A. That's correct.

16 Q. All right. So you made the cables, you flashed or
17 modified the modems, and what else did you do for the
18 company?

19 A. I shipped the packages. I labeled the packages,
20 found out where they were going to. Um, I also did
21 various things -- sometimes occasionally I'd get lunch
22 or I would get diet Pepsis, because we'd drink it a
23 lot. Um, I'd do various things around the house to help
24 out.

25 Q. Um, were you getting paid for your work for TCNISO

1 at this point?

2 A. I was going to receive a 5 percent share, that was
3 my belief, but I was not receiving any weekly
4 compensation of any sort.

5 Q. No salary of anything like that?

6 A. That's correct.

7 Q. So how -- what were you doing for money?

8 A. I was working at a full-time job at a grocery store.

9 Q. When did you do your work for TCNISO?

10 A. Um, when I'd get off work and when I had my days
11 off. My free time.

12 Q. You testified that you were going to get a 5 percent
13 share in the company. Did you believe that that would
14 eventually translate to money for you?

15 A. That's correct, I did.

16 Q. Did that ever happen?

17 A. No.

18 Q. Who else -- I want to ask about the other people
19 that were working at TCNISO during that time.

20 What was Ryan Harris' title at TCNISO?

21 A. CEO.

22 Q. Did he have another job?

23 A. Not to my knowledge.

24 Q. So this was a full-time job for him?

25 A. That's correct.

1 Q. What percentage of company's decisions, would you
2 say, that Mr. Harris made?

3 A. Up to 100 percent.

4 Q. Okay. Who else worked for the company? Are you
5 familiar with Isabella Lindquist? You mentioned her
6 earlier.

7 A. Yes.

8 Q. What did she do for TCNISO?

9 A. She was a programmer. She made the program Sigma.

10 Q. Where does she live?

11 A. Kentucky, to my knowledge.

12 Q. So she worked remotely?

13 A. That's correct.

14 Q. Did you ever communicate with her, talk to her in
15 any way?

16 A. Yes, I communicated with her on MSN Messenger a few
17 times and on another program called "IRC," "Internet
18 Relay Chat."

19 Q. Did she get paid by the company?

20 A. Yes.

21 Q. Do you remember -- do you know how much?

22 A. At the minimum \$500, I remember her getting paid.

23 Q. \$500 one time or was that a regular payment?

24 A. That I can recall, just that one time. There might
25 have been more, but that's what I can recall.

1 Q. All right. Other than Isabella Lindquist, was there
2 someone else who wrote software for the company?

3 A. To my knowledge, Paul Clark and --

4 Q. And?

5 A. And Chris Watts.

6 Q. Okay. So you mentioned a Paul Clark and then a
7 Chris Watts. Do you know what role Paul Clark played?

8 A. I believe he was the original owner of the website
9 "TCNISO.net."

10 Q. Before Ryan Harris?

11 A. That's right. To my knowledge.

12 Q. All right. And, Chris Watts, what did he do?

13 A. Um, he helped program CoaxThief and I believe he
14 helped develop some of Sigma.

15 Q. And so you said it was CoaxThief, I just want to be
16 clear for the Court Reporter?

17 A. That's correct.

18 Q. And Sigma as well, some portions of it?

19 A. Not to my knowledge exactly what he did, but I know
20 that he helped program it.

21 Q. When, um -- are you familiar with how TCNISO's
22 business worked in the sense of how people were able to
23 buy products from the company at their website?

24 A. That's correct, on the website.

25 Q. So and then -- was that the only way you could buy

1 this stuff, you had to go to the website, during the
2 time that you were there?

3 A. As far as my knowledge, yes.

4 Q. When people wanted to buy something, to buy a -- you
5 talked about how the company sold software and sold the
6 cables, correct?

7 A. That's correct.

8 Q. And I'm not sure you said this specifically, but you
9 talked about modifying modems. Did the company sell the
10 modified modems as well?

11 A. Yes.

12 Q. So if somebody wanted to buy any of those things,
13 how did they pay -- how could they pay?

14 A. They could pay with PayPal, credit card, or money
15 order.

16 Q. What is "PayPal," for anyone who doesn't know?

17 A. PayPal is an on-line merchant, they accept credit
18 cards and they allow you to transfer money from one bank
19 account to another bank account or from one PayPal
20 account to another PayPal account.

21 Q. Did TCNISO have a PayPal account?

22 A. Yes.

23 Q. Whose name was that account in?

24 A. Ryan Harris's.

25 Q. And you said credit cards as well, people could pay

1 with a credit card?

2 A. That's correct.

3 Q. Did the company have a -- did it have a bank
4 account?

5 A. Yes.

6 Q. At what bank?

7 A. Washington Mutual.

8 Q. How do you know that?

9 A. I opened it.

10 Q. Do you remember approximately when you opened that
11 account?

12 A. About the same time as opening the incorporation
13 papers. I'd say 2005.

14 Q. Whose names or name was on the account as an account
15 holder or a signatory?

16 A. Ryan Harris's and mine. Myself.

17 Q. Did money from TCNISO sales of products go into --
18 what accounts did the money go into?

19 A. The money went into the Washington Mutual account
20 and his personal PayPal account.

21 Q. Did you take any salary or payments for yourself out
22 of any of these accounts?

23 A. No.

24 Q. Do you know whether Ryan Harris regularly took money
25 out of any of these accounts?

1 A. Every single week, \$400, I believe, out of his
2 PayPal and possibly sometimes out of the Washington
3 Mutual account.

4 Q. Did you and Harris talk about what his financial
5 goals for this company were?

6 A. We wanted to make a lot of money, but we wanted to
7 buy a house, so our goal was to make \$200,000 at first.

8 Q. When you say "we," let's say -- I'm going to set you
9 aside here. Did Mr. Harris tell you what he wanted?

10 A. Yes, he wanted to raise \$200,000 to buy a house.

11 Q. Okay. So that was things he said to you?

12 A. That's correct.

13 Q. Let's take a look at Exhibit 5, Page 2. I will put
14 it on the screen. (On screen.)

15 What's the date of this chat?

16 A. February 6th, 2005.

17 Q. Is that January 6th?

18 A. I'm sorry. Yes, January 6th, 2005.

19 Q. Okay. Let me slide over to see if we can -- again,
20 I'll read the DerEngel part and you can read yours.

21 "Up to \$390 now. Do you think we'll top 400
22 today?"

23 A. "Yes."

24 Q. "We're going to be so f-ing rich in the future.
25 We're going to have our own place, our own business."

1 I'll show you now the next page. This is Page 3
2 of the same exhibit. And again we'll blow part of it
3 up.

4 Is this January 8th, 2005?

5 A. That's correct.

6 Q. Go ahead. Why don't you read your portion.

7 A. "We need to deposit money to Washington Mutual."

8 Q. And that says "WAMU" there? That's Washington
9 Mutual?

10 A. Yes.

11 Q. "We're going to make so much f-ing money."

12 A. "I know."

13 Q. "And then we're going to buy a really nice house
14 with a f-ing pool."

15 Turning to the next page, Page 4, and I'm going to
16 ask you now about the excerpts at the top part of that
17 page.

18 Again, January 8th, 2005?

19 A. Uh-huh.

20 Q. Is that correct?

21 A. That's correct.

22 Q. All right. I'll read the DerEngel portions, you can
23 read yours.

24 "Over \$900 in my PayPal now, two days."

25 A. "Nice."

1 Q. "Which means a pool for us."

2 A. "Yes, it does."

3 Q. "Let me ask you a question. Why buy a cheap house
4 when we can afford to buy a nicer house?"

5 A. "Hee-hee. I don't know."

6 Q. "We're aiming at 120K, but that's so doable."

7 A. "Yes."

8 Q. "Let's aim for something higher, 160 to 170."

9 Is that -- the 120K and the 160 to 170, those are
10 thousand dollars, is that right?

11 A. 100,000, yes.

12 Q. Um, right. So \$160,000, correct?

13 A. That's correct.

14 Q. Thank you.

15 Turning back for a minute to the products that
16 TCNISO sold.

17 When Ryan Harris first listed modems on the
18 company's website for sale, how did he list them, what
19 did he describe them as, if you can remember?

20 A. "Diagnostic modems."

21 Q. Did he tell you why he was describing these things
22 as "diagnostic modems"?

23 A. He was hoping that, in the future, that the cable
24 companies may purchase them from him.

25 Q. So did he tell you whether he was ever actually able

1 to sell any of them to the cable companies?

2 A. To my knowledge they never sold any to the cable
3 companies.

4 Q. So he never told you that he sold any to the cable
5 companies?

6 A. That's correct.

7 Q. And during the time you were involved, did you ever
8 see records of sales of any of these modems to cable
9 companies?

10 A. Never.

11 Q. Okay. So that's when you were first listed as
12 "diagnostic modems." Did that change the way they were
13 listed over time?

14 A. Yes.

15 Q. And then how were they listed later on?

16 A. Just as "preloaded cable modems with Sigma" or
17 "cable modems for sale."

18 Q. Um, did you ever have conversations with Mr. Harris
19 about his -- about what if any goals he had about doing
20 business or getting paid by the cable companies?

21 A. He was hoping that one day maybe the cable companies
22 would buy out the company or basically so we would make
23 a bunch of money right up front.

24 Q. What did he tell you was his hope that they would
25 buy it for, why did he believe that the cable companies

1 might buy it?

2 A. He believed that they'd buy it from him because we
3 could be damaging their -- basically by using the cable
4 modems we were able to, um, obtain free internet
5 service, higher speeds, and that cost the cable
6 companies a lot of money, and if we get bought out, then
7 we're paid. It's like a bribe.

8 Q. So was the suggestion that cable companies might
9 want to pay TCNISO to essentially buy it and shut it
10 down?

11 A. That's correct.

12 Q. Um, okay. When you talked about different versions
13 of -- there being different versions of the Sigma
14 software program, is that right?

15 A. Yes.

16 Q. And you mentioned, I think, Sigma 1.3 and then you
17 mentioned Sigma 1.6 as a later version, is that right?

18 A. That's correct.

19 Q. Okay. Did Ryan Harris tell you what that program,
20 the Sigma 1.6, was designed to do, what was the
21 advantage of it?

22 A. One of the bigger advantages is it became DOCSIS 1.1
23 friendly. It also --

24 Q. Let me stop you right there.

25 A. I'm sorry.

1 Q. You said, first of all, "DOCSIS." How is that
2 spelled?

3 A. D-O-C-S-I-S.

4 Q. Okay. And then I think you said "DOCSIS 1.1
5 friendly." What does that mean?

6 A. It was, um -- DOCSIS is like a type of software that
7 the cable modems companies use for the cable modems.

8 Q. All right. So you said then that it was "DOCSIS 1.1
9 friendly." What did you mean by that?

10 A. It made the cable modem easier to hack, uncap, and,
11 um, get free service. It also -- Sigma 1.6 also enabled
12 you to have -- it was easier to change the MAC address
13 on the cable modem to enable you to get internet
14 access.

15 Q. So it was easier than the earlier versions of Sigma?

16 A. It was much easier. It was embedded into it.

17 Q. So the function of MAC address changing was built
18 right into the program, is that what you're saying?

19 A. That's correct.

20 Q. Um, and were there any other -- did the Sigma 1.6
21 have a sniffer capability in it?

22 A. Yes.

23 Q. So that then -- what did that allow you to do?

24 A. It allows you to send out the MAC addresses on your
25 local network within your area.

1 Q. Was this the program you mentioned earlier called
2 CoaxThief?

3 A. Yes.

4 Q. How -- you described what it did, that it allowed
5 you to sniff other MAC addresses. How did you learn
6 that?

7 A. I learned it through Chris Watts and Ryan Harris.

8 Q. Are you familiar with something called "Stealth
9 Mode"?

10 A. Yes.

11 Q. What -- was that a feature of Sigma 1.6?

12 A. Yes, I believe so.

13 Q. What was "Stealth Mode"?

14 A. Stealth Mode enabled you to be on the internet
15 provider's network without being seen.

16 Q. Why -- what would be the purpose of that?

17 A. If you're not being seen, then they can't find you
18 stealing cable, internet or obtaining high speeds.

19 Q. So you talked about the software products, the 1.6
20 Sigma being the later version of the Sigma program, and
21 you testified earlier that the company also sold modems,
22 modified modems as well?

23 A. That's correct.

24 Q. The modems that it sold to people, how did -- how
25 did you get them?

1 A. Um, we purchased them from various companies, um, we
2 also purchased them from eBay, anywhere we could find
3 them.

4 Q. When you say "we," who bought those modems?

5 A. Me and Ryan Harris.

6 Q. What did you pay for the modems?

7 A. Ranging anywhere from 15 to 60 dollars.

8 Q. So you ordered these modems and they got shipped to
9 where?

10 A. To the apartment we lived at, me and Ryan Harris's
11 apartment.

12 Q. What did you do with them once you got them?

13 A. Um, we modified them and sold them to the customers.

14 Q. Who modified them?

15 A. Me and Ryan Harris.

16 Q. When you sold them, um, did you sell them for the
17 same thing you bought them for, less, more, what?

18 A. We sold them at \$100 apiece. Up to \$100 apiece.

19 Q. So the sales prices vary, but --

20 A. Depending on the modem type.

21 Q. Were they more than what you paid for them
22 initially?

23 A. Always.

24 Q. Let's take a look at Exhibit 5, Page 7. And I'll
25 show that on the screen. (On screen.) I'll focus you

1 on the excerpts on the bottom of that page now.

2 This is January 25th, 2005?

3 A. Yes.

4 Q. All right. And here the -- I'll read the DerEngel
5 portions of this chat.

6 Is it fair to say that your portions that are not
7 highlighted are unrelated to what he's saying right
8 here?

9 A. (Reads.) That's correct.

10 Q. Okay. Does that happen sometimes in chats that
11 people are typing essentially at the same time and so
12 what one person says doesn't necessarily coincide with
13 what the other person is saying?

14 A. That's correct.

15 Q. Okay. All right.

16 So DerEngel: "We're going to be selling SB-5100
17 modems with Black Cat for 99.99."

18 Is that the hundred dollars you were talking
19 about?

20 A. Yes.

21 Q. And then let's take a look at the next page. And I
22 want to ask you -- first of all, this is still January
23 25th. The time is 12:29.

24 Is this the continuation of that discussion?

25 A. That's correct.

1 Q. All right. Now you read your portion here.

2 A. "Nice. Good profit."

3 Q. "So you got them at what price?"

4 A. "SB-3100s for 18 dollars each. SB-5100s for 30
5 dollars each."

6 Q. "Tight."

7 So that's an example of the prices that you bought
8 these modems at?

9 A. Yes, that's an example.

10 Q. Did you ever sell -- do you ever remember selling
11 any of the modems you got unmodified, just in the same
12 state that you bought them, um, to people?

13 A. Not that I can recall.

14 Q. Were, um -- did the website list, among the products
15 TCNISO was offering, these unmodified original-state
16 modems?

17 A. Yes, that I can recall.

18 Q. And you do remember them being listed on the
19 website?

20 A. Yes.

21 Q. And what was the purpose of having them listed that
22 way on the website?

23 A. So that people would feel comfortable buying them
24 maybe either/or or if they wanted to modify it
25 themselves.

1 Q. But you don't remember actually selling any that
2 weren't modified?

3 A. Not that I can recall at all.

4 Q. So when you sold the modems to people, um, who was
5 it who then shipped them out?

6 A. Me or Ryan Harris.

7 Q. How did you know what you were supposed to send and
8 to whom, how did figure that out?

9 A. The website had a program built into it that sent it
10 to our computer in the living room and it would tell us
11 where the orders were going to, who bought what, and
12 then it would print a shipping label, would create the
13 box, and we'd put it in the box and ship it to that
14 customer.

15 Q. So TCNISO had some kind of records, business records
16 essentially, that showed that information, the customer,
17 what they bought, where they lived?

18 A. That's correct.

19 Q. Take a look, if you could, at -- actually, I'll show
20 it to you. At Exhibit 5, Page 10. Let me blow this
21 up. (Blows up.) Okay. This is February 9th.

22 This is a part of the chat log from February 9th,
23 2005?

24 A. That's correct.

25 Q. Can you read your portion.

1 A. "Are you busy?"

2 Q. "Somewhat. I'm getting orders ready to ship today.
3 We're at like 7 to 10 orders shipping --"

4 A. "Okay."

5 Q. "-- per day."

6 So at this point, as of February of 2005, is that
7 a discussion about sort of what the volume of orders
8 was, 7 to 10 per day?

9 A. Yes.

10 Q. Did it go up from there?

11 A. Um, on average some days there would be more and
12 some days there would be zero.

13 THE COURT: Mr. Bookbinder, about how much
14 longer do you think you have with this witness?

15 MR. BOOKBINDER: Um, wait a second, your
16 Honor.

17 THE COURT: Well --

18 MR. BOOKBINDER: About 20 minutes to a half
19 hour.

20 THE COURT: Okay. Well, when you're at or
21 getting to a convenient breaking point, I'm going to
22 excuse the jury so we can talk about tomorrow.

23 MR. BOOKBINDER: Yes, your Honor. This is a
24 good spot.

25 THE COURT: All right. Ladies and gentlemen,

1 I'm going to excuse you now. You did a great job, you
2 were all here at 9:00 this morning, and we were working
3 so things would go smoothly and they've gone pretty
4 smoothly as these things go. So please come back again
5 at 9:00 tomorrow, um, we'll start as soon as you're all
6 here or as soon after that as I can deal with whatever I
7 need to deal with.

8 It's very important that you continue to keep an
9 open mind, that you don't discuss the case among
10 yourselves or with anybody else. Don't read or watch or
11 listen to anything about the case. If there's something
12 in the media, as I said, if it's in the newspaper, turn
13 the page, if it's on the radio, turn it off, change the
14 station. And, of course, don't talk about the evidence
15 you're hearing with anybody else or communicate on the
16 internet about it.

17 The Court will be in recess for the jury.

18 And you should leave your notebooks right on your
19 seat and you'll get them back tomorrow.

20 (Jury leaves, 12:55 p.m.)

21 THE COURT: You may be seated.

22 All right. And you're excused until 9:00 tomorrow
23 morning. You can go, thanks.

24 (Witness leaves.)

25 THE COURT: All right. We discussed this this

1 morning. You're going to continue to work on the
2 stipulations and submit them tomorrow, hopefully. After
3 Mr. Phillips the witness will be Mr. Kohler and there
4 are no remaining issues for me to rule on or there are
5 no issues for me to rule on with regard to Mr. Kohler.

6 When it comes time for Lindquist or at the 11:00
7 break, in any event, I'll ask her if she intends to
8 assert her rights and deal with the immunity order. I
9 had ruled that part of Exhibit 6 was admissible and part
10 of it was to be redacted, I believe.

11 Has that been done?

12 MR. BOOKBINDER: Yes, your Honor.

13 THE COURT: All right. Do you expect we'll
14 get past Lindquist tomorrow?

15 MR. BOOKBINDER: I sort of doubt it, your
16 Honor.

17 THE COURT: Who is after Lindquist?

18 MR. BOOKBINDER: After Lindquist is Benjamin
19 Brodfuehrer. He's an employee of Charter
20 Communications.

21 THE COURT: Okay. And are there -- I just
22 have to go in my notes. Are there objections to his
23 testimony?

24 MR. BOOKBINDER: I don't know.

25 THE COURT: Okay. Actually, I've got it right

1 here. The document seems to have fallen out of my
2 file. (Looks.) Well, I'll check now. Your objections
3 to 8 and 9 are based on relevance and Rule 403. So I'll
4 look at those.

5 And then the witness after that is Larosa and
6 there are no objections at this time to Exhibit 15.

7 Okay? Is there anything else we should discuss?

8 MR. BOOKBINDER: Your Honor, just a mechanical
9 matter about Chris Kohler, the Motorola witness. We
10 have prepared, and we've given it sometime ago to
11 Mr. McGinty, but two chawks we want to use with him for
12 him to just explain how internet, cable internet access
13 works and how cable modem hacking works, and what we're
14 hoping to do is --

15 THE COURT: Are those the chawks that were
16 marked earlier today as Exhibit C?

17 MR. BOOKBINDER: Yes.

18 THE COURT: Could I see them? These?

19 MR. BOOKBINDER: They are, your Honor. And
20 we've got them on poster boards, like for the opening,
21 and what we were hoping and what we thought might be
22 easiest is if we could put them just on an easel here
23 and just have him step down and point to things.

24 THE COURT: That's fine. That's fine.

25 Okay? All right. I'll see you at 9:00

1 tomorrow morning and we will continue.

2 The Court is in recess.

3 (Adjourned, 1:00 p.m.)

4

5 C E R T I F I C A T E

6

7 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do
8 hereby certify that the forgoing transcript of the
9 record is a true and accurate transcription of my
10 stenographic notes, before Chief Judge Mark L. Wolf, on
11 Wednesday, February 22, 2012, to the best of my skill
12 and ability.

13

14

15 /s/ Richard H. Romanow 11-06-12

16 _____
RICHARD H. ROMANOW Date

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